

# Legislative Audit Division

State of Montana



Report to the Legislature

June 2004

## Performance Audit

# Professional & Occupational Licensing

**Business Standards Division  
Department of Labor and Industry**

This report provides findings and recommendations relating to House Joint Resolution 20, which requested a series of performance audits of professional and occupational licensing boards administratively attached to the Department of Labor and Industry. Five aspects of professional and occupational licensing were examined:

- ▶ Licensing fees and board funds.
- ▶ Board disciplinary activities.
- ▶ Department administrative procedures.
- ▶ Public and professional representation on licensing boards.
- ▶ Education and experience requirements applied as a condition of licensure.

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Members of the performance audit staff hold degrees in disciplines appropriate to the audit process. Areas of expertise include business and public administration, statistics, economics, political science, criminal justice, computer science, education, and law.

Performance audits are performed at the request of the Legislative Audit Committee which is a bicameral and bipartisan standing committee of the Montana Legislature. The committee consists of six members of the Senate and six members of the House of Representatives.

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June 2004

The Legislative Audit Committee  
of the Montana State Legislature:

This is our performance audit of professional and occupational licensing boards. This audit was conducted in response to House Joint Resolution (HJR) 20, passed during the 2003 legislative session. HJR 20 requested we examine the activities of professional and occupational licensing boards administratively attached to the Department of Labor and Industry.

This report provides information to the Legislature regarding professional and occupational licensing. Findings and recommendations address board and department organization, licensing fees and board finances, application and renewal procedures, and board disciplinary activities. A written response from the department is included at the end of the report.

We wish to express our appreciation to board members, department staff and licensees for their cooperation and assistance during this audit.

Respectfully submitted,

*(Signature on File)*

Scott A. Seecat  
Legislative Auditor

# **Legislative Audit Division**

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## **Performance Audit**

# **Professional & Occupational Licensing**

**Business Standards Division**

**Department of Labor and Industry**

Members of the audit staff involved in this audit were Angie Grove,  
Angus K. Maciver, David P. Nowacki, and Kent Wilcox.

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## **Appointed and Administrative Officials**

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### **Department of Labor and Industry**

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James Brown, Administrator, Business Standards Division

Kevin Braun, Chief Legal Counsel, Office of Legal Services

Lisa Addington, Chief, Health Care Licensing Bureau

Sandy Matule, Acting Chief, Business and Occupational Licensing  
Bureau

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### Introduction

Montana regulates the practice of various professions and occupations through licensing boards. Licensing boards consist of members of the profession or occupation and members of the public appointed by the Governor. The primary purpose of professional licensing is to ensure public health, safety and welfare is protected from unskilled, incompetent or unethical practitioners. There are currently 32 professional licensing boards administratively attached to the Department of Labor and Industry.

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### House Joint Resolution 20

During the 2003 session, the Montana Legislature passed House Joint Resolution (HJR) 20, requesting the Legislative Audit Committee prioritize a series of limited scope performance audits of the licensing boards administratively attached to the department. HJR 20 requested we address five aspects of professional and occupational licensing; board composition, department administrative services, licensing fees, public protection, and disciplinary activities.

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### Board Composition

HJR 20 requested we examine board composition to ensure both the public and professions are adequately represented. We reviewed various aspects of board organization, including membership requirements, length of board member terms, board meetings, and the ratio of public to professional board members. Boards consist of between three to eleven members. Board members serve terms of between three and five years. Members either meet as a full board, or in smaller groups. In FY 2003, around 250 meetings were held.

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### Ratio of Public to Professional Members Compared to Other States

All licensing boards in Montana contain a majority of members representing the interests of the regulated profession. Nearly all boards are also required under statute to include a member or members appointed to represent the interests of the public. To determine if public and professional interests are adequately represented on boards, we compared the ratio of public to professional members on licensing boards with other boards in Montana and other states. This comparison showed licensing boards have more public members on average than regulatory boards in Montana and in other states.

## Report Summary

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### **Department Organizational Structure**

HJR 20 requested we determine if the department administers board activities in compliance with law and rule, provides boards timely and effective services, and uses resources efficiently. The department provides administrative support to boards through the Business Standards Division.

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### **Changes to Improve Department Organizational Structure**

Following the 2001 legislative session, board administrative responsibilities were transferred from the Department of Commerce to the Department of Labor and Industry. Following the transfer, the Department of Labor and Industry conducted an internal review of the organizational structures of the two licensing bureaus to identify strengths and weaknesses. Based on this review, the department developed management reorganization plans for both bureaus to strengthen management controls and deliver improvements in administrative services provided to boards, licensees and the public.

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### **Additional Guidance for Management Reorganization Needed**

Continuing efforts by the department to identify and remedy weaknesses in administrative procedures should lead to further improvements in the delivery of services to boards and licensees. The department can maximize the benefits derived from management reorganization by revising policies and procedures, improving management information reporting, and establishing performance measurement parameters.

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### **Licensing Fees and Board Finances**

Professional licensing is funded entirely through state special revenue provided by fees paid by licensees. Licensing fees fund all board activities and the department's administrative services. Over the past two fiscal years, licensing fees generated approximately \$5.35 million in average annual revenues. HJR 20 requested we examine licensing fees to ensure they are commensurate with the costs of regulation. HJR 20 also requested we review board fund balances to ensure they are sufficient for board operations.

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### **Assigning the Department Responsibility for Administrative Fees**

Review of fee revenues, licensee opinions, and fees in other states showed the procedures for setting fee types and amounts for first-time applicants and renewals ensure fees are commensurate with costs. However, fees for administrative services are not

commensurate with costs. There are significant variations in administrative service fees charged by different boards. As the administrative entity, the department is the service provider and the most suitable location for decisions relating to administrative service fees. By assigning the department authority for setting administrative service fees, a single uniform administrative fee schedule can be developed.

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**Improvements Needed in Responding to Excess Balances**

Section 17-2-302, MCA, limits the fund cash balance to twice the board's annual appropriation authority. Responding to an excess balance should involve returning money to licensees through temporary fee adjustments. The response should also be as timely and efficient as possible. Review of the seven boards with excess balances showed responses were not meeting these requirements. To improve boards' ability to respond to excess cash balances, the department should be given statutory authority to make temporary fee adjustments. Boards should delegate authority over temporary fee adjustments to the department in cases where cash balances exceed limitations defined in statute. Boards would need to establish the framework needed to adjust fees and reduce fund balances.

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**Department Administrative Support Costs**

Statute authorizes the department to assess administrative costs against board funds on an equitable basis and requires boards pay their share of these costs. The department recently made changes in the methodology for calculating administrative support costs. These changes have resulted in some boards paying more and others paying less. However, the new procedures have eliminated the problem of cross-subsidization between boards and also ensure administrative support costs are allocated equitably.

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**License Application**

All licensees are required to go through the application process. Although requirements vary according to different professional standards, applicants generally have to meet minimum educational and professional experience requirements. HJR 20 requested we examine board education and experience requirements to ensure they protect the public rather than limit access to a profession.

## **Report Summary**

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### **Licensure Requirements Protect the Public**

Review of the licensure process showed boards are using licensure requirements to protect the public, rather than limit access.

Licensure requirements enjoy wide support among board members and licensees and are comparable with requirements in other states. As the department standardized administration of the licensure process, procedures for individual boards have tended to gravitate towards common standards.

The department receives an average of 7,000 new license applications annually. We analyzed data for approximately 11,700 license applications received by the department during FY 2002 and FY 2003. Data shows 88 percent of applications were approved and less than 1 percent of applications were denied over the two-year period.

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### **Department Responsibility for Application Review**

Review of the application process showed the majority of boards ensure process timeframes are reduced as much as possible.

However, we identified some circumstances in which an application can be delayed by boards requiring a separate review of applications by board members prior to license issuance. When separate board review is required, the applicant can expect to wait longer for a decision. Separate review requirements could impose a delay of up to six weeks and could have a detrimental impact on licensees' employment opportunities or business productivity. To ensure applicants receive efficient and timely services, statutory authority for initial review of applications should be delegated to the department.

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### **License Renewal**

All licensees are required to periodically renew their licenses to ensure skills are regularly updated or assessed through continuing education requirements. The department processes 50,000 – 60,000 renewal applications annually. In 2002, the department began offering licensees the option of renewing online. Most licensees can now submit renewal information, pay fees and print their licenses via a website.

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### **Renewal Cycles and Dates are Inefficient**

The current distribution of renewal dates does not ensure the renewals process is administered as efficiently as possible. For fiscal

year 2003, 45 percent of total renewals took place in either November or December. The increased workload can result in the department contracting for temporary staff services. If the department could reduce the large spikes in renewal numbers, it should not be necessary to hire temporary staff.

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**Online Renewal is Restricted for Some Licensees**

Despite success in implementing online renewal, approximately 11,400 licensees are currently unable to access the service due to boards requiring renewal applicants to submit documentary evidence of completion of continuing education hours, or use of continual renewal cycles.

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**Department Should Pursue Standardization of Renewal Procedures**

Adherence to tradition may be limiting consideration of new approaches reflecting administrative efficiency and technological developments in renewal procedures. Because the majority of boards have delegated the department authority over renewals, we believe existing administrative procedures should be extended to cover all boards where appropriate. The department should pursue revision of statute where this is necessary to achieve standardization in board renewal procedures.

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**Disciplinary Activities**

HJR 20 requested we review board disciplinary actions to ensure they “protect the public and are rational, impartial, and in compliance with state law and regulations”. Again, HJR 20 emphasizes public protection as a primary concern and also highlights the potential for bias in the disciplinary process. Boards can impose a variety of sanctions ranging from letter of reprimand to license revocation. The department is responsible for enforcement of board sanctions. The department records the total number of new complaints received for each fiscal year. For the last four fiscal years, the department received an average of 1,150 complaints annually.

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**Complaints Process Timeframes are Acceptable**

Complaints should be dealt with as quickly as possible to ensure corrective action is taken against problem licensees and further harm is avoided. Results from file review showed the average time from receipt of complaint to initial hearing at screening panel was approximately 60 days. Average time from receipt of complaint to

## Report Summary

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closure was around 120 days. When all process steps are considered, the average timeframes observed are within an acceptable range.

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### Complaints Outcomes are Justified

Boards dismiss the majority of complaints without further action. For unprofessional conduct cases, board sanctions are imposed where a finding of reasonable cause is upheld by an adjudication panel. A small proportion of complaints are dismissed due to a lack of jurisdiction. We did not identify any examples of screening panels dismissing complaints when corrective action appeared to be justified by available information.

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### Promoting Uniformity in Disciplinary Activities

We did not identify problems with impartiality in the complaints process. We did identify inconsistencies in board activities and in department administrative procedures. Our review identified areas where increased standardization in disciplinary policies and procedures could be achieved.

- ▶ Consistency in board disciplinary policies – lack of interaction between boards has prevented dissemination and adoption of best practices. Boards could also benefit from exploring disciplinary options used in other state government licensing or law enforcement functions. Promoting standardized procedures could also allow the department to realize administrative efficiencies.
- ▶ Uniform administrative rules for professional assistance programs – four boards operate professional assistance programs, which allow licensees with drug or alcohol dependency or other problems to seek treatment. Review showed professional assistance programs for some boards operate without any formal guidance through administrative rules. To comply with statute, boards must formally establish rules governing assistance program administration.
- ▶ Department compliance inspection procedures – the department should take advantage of recent reorganization efforts to pursue further standardization of compliance inspection procedures. By standardizing procedures, the department should be able to provide more effective oversight of inspection programs and deliver better services to licensees and boards.
- ▶ Department investigation procedures – the department is responsible for investigating complaints of professional misconduct by licensees. Review of complaint investigation

## **Report Summary**

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procedures showed the department does not use evaluation tools allowing for assessment of investigations on a project-specific basis. Establishing budgeted hours for component investigation tasks should allow the department to gather data for use in managing investigation resource allocation, and establishing performance evaluation parameters for staff.

# Chapter I – Introduction and Background

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## Introduction

Montana regulates the practice of various professions and occupations through licensing boards. The membership of licensing boards consists of members of the profession or occupation and members of the public appointed by the Governor. The primary purpose of professional licensing is to ensure public health, safety and welfare is protected from unskilled, incompetent or unethical practitioners. To achieve this goal, licensing boards are responsible for ensuring qualified individuals enter the profession and adhere to established standards of professional conduct. To meet these responsibilities, licensing boards exercise regulatory authority in the following areas:

- ▶ **Licensure** – Establishing minimum educational and/or experience requirements for prospective licensees and for continuing maintenance of licensed status, and assessing fees against licensees to fund regulatory activities.
- ▶ **Discipline** – Setting standards for professional conduct and enforcing these standards through investigation of complaints, prosecution of licensees in cases of unprofessional conduct, and imposition of sanctions.

Nearly all of the professional and occupational licensing boards operating in Montana are attached for administrative purposes to the Department of Labor and Industry (the department). The department is responsible for providing administrative services necessary for boards to fulfill their regulatory role.

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## Background Information

The shared objective for all professional licensing boards is protecting the interests of the public. However, the history of professional and occupational regulation also indicates public policy in this area has developed to ensure the interests of the profession or occupation are also addressed. The result is a system of self-regulation where professions can exercise a substantial amount of influence over regulatory developments.

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## Professional Licensing in Montana

Over the past fifty years, increased workforce specialization, technological change and greater demand for certain professional

## **Chapter I – Introduction and Background**

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services have combined to increase the number of licensed professions and occupations. There are currently 32 professional licensing boards administratively attached to the Department of Labor and Industry. The department also administers an additional five professional licensing programs without the involvement of a board. The following table shows the total number of licensees under the jurisdiction of the boards and programs administered through the department:

## Chapter I – Introduction and Background

**Table 1**  
**Number of Licensees by Board**  
 Fiscal Year 2004

<u>Board Name</u>	<u># Licensees</u>
Board of Nursing	15,387
Board of Professional Engineers & Land Surveyors	11,578
Board of Barbers and Cosmetologists	10,424
Board of Medical Examiners	9,814
Board of Realty Regulation	6,088
Boilers/Blasters/Cranes Programs	5,342
Board of Public Accountants	4,475
State Electrical Board	4,016
Board of Pharmacy	3,455
Board of Plumbers	1,651
Board of Private Security Patrol Officers & Investigators	1,446
Board of Athletics	1,398
Board of Outfitters	1,382
Board of Social Work Examiners & Professional Counselors	1,338
Board of Radiologic Technologists	1,323
Board of Architects	1,287
Board of Dentistry	1,254
Board of Veterinary Medicine	1,015
Board of Physical Therapy Examiners	1,003
Board of Clinical Laboratory Science Practitioners	903
Board of Respiratory Care Practitioners	647
Board of Speech-Language Pathologists & Audiologists	578
Board of Real Estate Appraisers	550
Board of Chiropractors	546
Licensed Addiction Counselors Program	504
Fire Prevention Program	489
Board of Funeral Services	458
Board of Occupational Therapy Practice	392
Board of Optometry	277
Board of Nursing Home Administrators	233
Board of Psychologists	224
Board of Sanitarians	190
Board of Landscape Architects	105
Board of Hearing Aid Dispensers	94
Board of Alternative Health Care	90
<b>Total</b>	<b>89,956</b>

**Source: Compiled by Legislative Audit Division from Department data.**

## Chapter I – Introduction and Background

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Boards and programs administered by the department have approximately 90,000 licensed individuals under their jurisdiction. This represents around 18.5 percent of Montana’s total civilian workforce. The data shows a wide variation between the numbers of individuals licensed by each board or program.

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### How are Professions and Occupations Regulated?

Montana has adopted a system of self-regulation through licensing boards. However, boards cannot operate with complete autonomy because administrative responsibilities are assigned to the department. The following sections outline the extent of the regulatory and administrative authority assigned, respectively, to licensing boards and the department.

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### Regulatory Authority of Licensing Boards

Montana’s professional licensing boards are established by statute. Statutes outline the composition and membership requirements for the boards, board members terms, and any additional requirements specific to particular boards. The main body of law relating to professional licensing can be divided into two groups:

- 1) **General Provisions** – Applicable to all licensing boards, general provisions outline board authority, duties and responsibilities in general terms. General provisions also address the relationship between the department and boards.
- 2) **Board-specific Provisions** – Remaining laws outline specific provisions for each board and the professions they regulate. In general, board-specific provisions address board operating procedures, licensing requirements, and professional practice and conduct guidelines.

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### Administrative Authority of the Department

Statutes also define the relationship between the department and agencies allocated to the department for administrative purposes. Under the definition of administrative allocation, boards independently exercise their “quasi-judicial, quasi-legislative, licensing, and policymaking functions”. The department is required to “direct and supervise the budgeting, recordkeeping, reporting, and related administrative and clerical functions of the agency”.

## Chapter I – Introduction and Background

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Statutes outline specific duties and responsibilities assigned to the department, including providing necessary administrative services; arranging board meetings and keeping board records; administering license application, examination and renewal procedures; investigating complaints and pursuing disciplinary action against licensees; and approving board expenditures and assessing department costs against board funds. Statute also authorizes the department to hire, supervise, manage and terminate personnel.

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### House Joint Resolution 20

During the 2003 session, the Montana Legislature passed House Joint Resolution (HJR) 20, requesting the Legislative Audit Committee prioritize a series of limited scope performance audits of the licensing boards administratively attached to the Department of Labor and Industry. HJR 20 requested we address five aspects of professional and occupational licensing and we based our audit objectives on this guidance. The following summarizes HJR 20 issues and associated objectives:

- 1) **Licensing fees** – Ensuring fees are commensurate with the costs of regulation and fund balances are sufficient for board operations.
  - ▶ **Objective:** Assess the effectiveness of procedures for ensuring licensing fees are established at a level commensurate with the costs of regulation.
  - ▶ **Objective:** Determine if sufficient fund balances are maintained to allow for effective operation of licensing boards.
- 2) **Disciplinary activities** – Ensuring disciplinary policies, procedures and practices protect the public, are rational and impartial, and in compliance with state law.
  - ▶ **Objective:** Examine licensing board disciplinary policies, procedures and practices to assess and determine the level of protection they provide to the public.

## Chapter I – Introduction and Background

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- 3) **Department administration** – Assessing the efficiency and effectiveness of the department’s administration of licensing board activities.
  - ▶ **Objective:** Evaluate department procedures for administering the activities of licensing boards to ensure they are in compliance with law and rule, provide for timely and effective service for boards and licensees, and make the most efficient use of available resources.
  
- 4) **Board composition** – Reviewing the composition of licensing boards to ensure both the public and regulated professions are adequately represented.
  - ▶ **Objective:** Determine if the public and regulated professions/occupations are afforded sufficient and equitable representation under current statute governing board composition.
  
- 5) **Public protection** – Evaluating educational and experience requirements established by boards to ensure they protect the public rather than limit access to the profession or occupation.
  - ▶ **Objective:** Determine the extent to which the regulatory powers conferred on licensing boards serve to protect the public interest rather than restrict access to professions or occupations.

HJR 20 also requested the Legislative Audit Committee present its findings, recommendations and any proposed legislation be presented to the 59th Legislature.

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### Audit Approach

Objectives and associated methodologies were divided between three separate performance audits. The scope and direction of each audit was determined by the primary focus of objectives. The first audit project focused on the boards’ regulatory role, including board composition and disciplinary activities. The second audit project focused on the department’s administrative role and addressed fees and finances and other administrative duties and responsibilities assigned to the department.

## Chapter I – Introduction and Background

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The third audit project involved obtaining input from board members and licensees and gathering information from other states. All board members were sent letters explaining the audit process and soliciting input via a survey. We sent 231 letters and survey forms and received responses from 161 board members. We obtained input from licensees using an online survey form, which was a shorter version of the survey distributed to board members. We contacted licensees using e-mail addresses supplied by the department. We delivered 5,076 e-mails to active licensees from 23 different boards. 1,159 licensees responded to the survey. Appendix B contains full response data sets for both board member and licensee surveys.

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### Audit Does Not Focus on Individual Boards

Unlike previous sunrise/sunset reviews of licensing boards, this audit did not focus on specific activities of individual boards. This approach avoids addressing specific compliance elements and making recommendations for individual boards. Instead, we focused on the overall regulatory framework and the extent to which Montana’s policy approach is delivering results.

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### Report Organization

This report draws together findings and recommendations from the three separate audit projects and allows us to present a comprehensive overview of professional regulation in Montana. The report is organized in chapters reflecting the varying levels of regulatory and administrative activity performed by licensing boards and the department. The report’s organization is also intended to reflect the regulatory process as it impacts the licensed community by focusing on the aspects of the licensing system most familiar to licensees. The following summarizes the organization of subsequent chapters:

**Chapter II** – Board and department organizational structure.

**Chapter III** – Licensing fees and the funding of professional regulation.

**Chapter IV** – License application requirements and procedures.

**Chapter V** – License renewal requirements and procedures.

**Chapter VI** – Board disciplinary procedures and practices.



# Chapter II – Board and Department Organization

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## Introduction

In general terms, statute defines a system in which boards are assigned authority over establishing regulatory requirements, and the department is assigned authority over the administration of the regulatory system. Boards are responsible for setting policy and the department is responsible for implementation. Administrative responsibilities are assigned to the department to ensure certain uniform standards are applied to all boards.

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## Balancing Public and Professional Interests

Conflicts or perceived conflicts between public and professional interests are an inevitable result of a system of self-regulation where professions, through majority representation on licensing boards, can both set and enforce licensure requirements and standards of professional conduct. Montana has tried to balance public and professional interests by providing for effective oversight of professional licensing. Increasing oversight has been achieved through two methods:

- 1) **Public Representation** – Members of the public are appointed to boards to serve as representatives of the public interest. Their place in the board organizational structure allows for public input.
- 2) **Centralized Administrative Authority** – Strengthening the department’s role and standardizing administrative procedures allows for more effective oversight.

The following sections contain information on board and department organizational structures.

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## Board Organizational Structure

HJR 20 requested we examine board composition to ensure both the public and professions are adequately represented. We reviewed various aspects of board organization, including membership requirements, length of board member terms, board meetings, and the ratio of public to professional board members.

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## Board Membership Requirements

Board membership requirements are outlined in statute. Boards consist of between three to eleven members. Boards with higher

## **Chapter II - Board and Department Organization**

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numbers of members typically regulate larger professions. All board members have to meet certain requirements. The Governor is statutorily responsible for board appointments. Governor's office staff maintain lists of interested individuals and also actively solicit inquiries from interested parties (professional organizations, for example). Prior to final approval of an appointment, staff ensure the individual meets membership requirements. Board members are required to take an oath of office on appointment. The Governor has the authority to remove board members at any time where cause exists, subject to specific statutory guidance.

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### **Board Member Terms**

Board members serve terms of between three and five years. For around one third of boards, statute limits the number of terms a board member can serve. Where term limits are used, board members are usually restricted from serving more than two consecutive terms. We asked board members questions relating to membership terms and term limits. Forty-three percent think term limits have a positive impact on board operations. Several board members responding to our survey also commented that term limits might adversely impact a board's operations by removing members with valuable experience.

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### **Board Meetings**

Board meetings can take various forms. Members either meet as a full board, or in smaller groups. Any meeting of two or more board members is subject to Montana's open meeting laws. Board members are compensated for their time at \$50 per day, plus travel expenses. The number of meetings a board holds throughout the year varies depending on the scope of regulatory activity. In FY 2003, around 250 meetings were held. On average, boards hold eight meetings per year, but boards with large numbers of complaints or a broad range of regulatory issues hold upwards of 15 meetings per year. Survey responses showed the majority of board members are satisfied with arrangements made for board meetings.

Each board is required to appoint several members to screening and adjudication panels, which meet to review complaints made against licensees. Screening panels review allegations of unprofessional conduct made in complaints received by the department. If the

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screening panel finds reasonable cause to uphold a complaint, disciplinary action is recommended. The adjudication panel review case details and makes the final decision on disciplinary action.

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### Ratio of Public to Professional Members

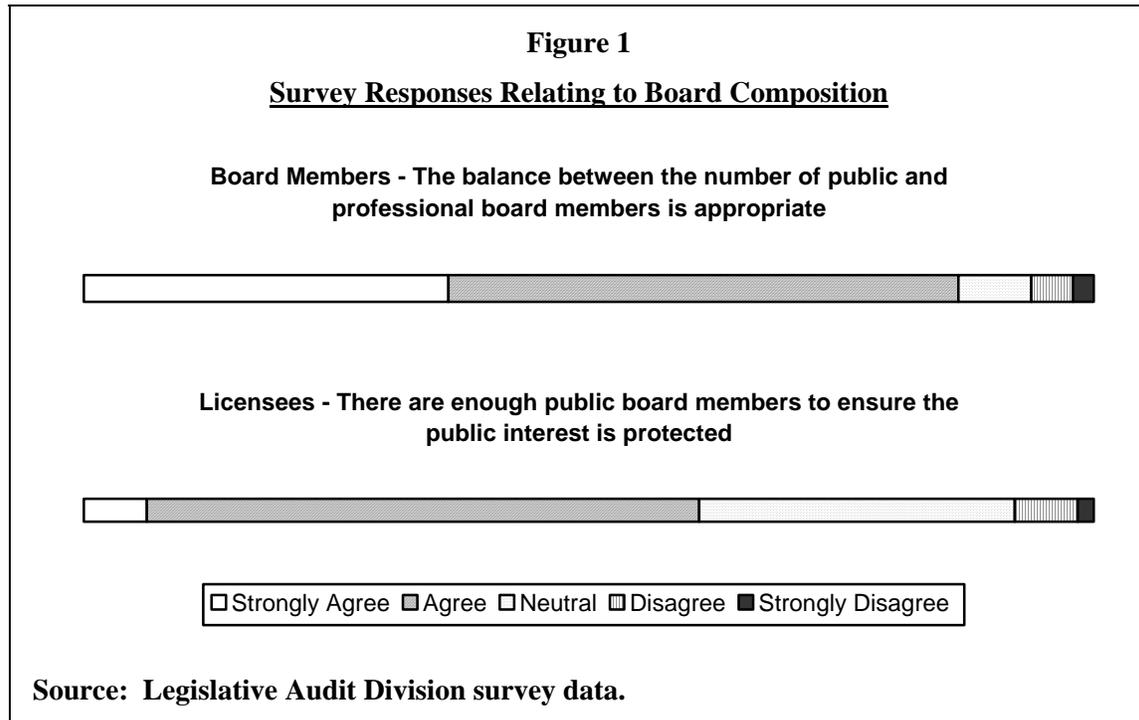
All licensing boards in Montana contain a majority of members representing the interests of the regulated profession. Nearly all boards are also required under statute to include a member or members appointed to represent the interests of the public. HJR 20 specifically emphasized the importance of the ratio between public and professional board members. The inclusion of public members ensures the public interest is represented.

To determine if public and professional interests are adequately represented on boards, we compared the ratio of public to professional members on licensing boards with ten other Governor-appointed boards in the state. This comparison showed licensing boards have more public members on average than other regulatory boards in the state. We also compared the ratio for selected Montana boards with boards in six other states. This analysis showed approximately 23 percent of Montana board members are public representatives, compared with 18 percent in other states.

We asked board members and licensees questions relating to board composition. The following figure shows survey responses:

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Overall responses indicate board members and licensees are satisfied with the ratio between public and professional members. It is also important to note that public board members also responded positively to questions relating to board composition.

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### Department Organizational Structure

HJR 20 requested we examine the general efficiency and effectiveness of department administration of board activities. Our audit objective was to determine if the department administers board activities in compliance with law and rule, provides boards timely and effective services, and uses resources efficiently. The Department of Labor and Industry provides administrative support to boards through the Business Standards Division. The division is organized into four bureaus, two of which are dedicated to administering board activities. The Health Care Licensing Bureau (HCLB) administers boards regulating health care professions. The Business and Occupational Licensing Bureau (BOLB) administers boards regulating a wide variety of non-health care related professions or occupations. Division-level administrative, legal and information technology staff also provide services to boards. The

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following table provides some basic management information for the two bureaus:

**Table 2**  
**Basic Management Information for Department Licensing Bureaus**  
Fiscal Year 2003

<i>Program Indicators</i>	<i>Business Bureau (BOLB)</i>	<i>Health Care Bureau (HCLB)</i>
Boards or Programs	17	20
Licensees	43,678	36,379
Total FTE	32.5	26.5
Licensees Per FTE	1,344	1,373
Complaints Received	635	476
Compliance Inspections	2165	1209

**Source: Compiled by Legislative Audit Division from department records.**

### **Funding Administrative Services**

The department is statutorily responsible for assessing costs against board funds. Expenditures cover both the department's administrative services and the board's regulatory activities. The following table shows overall expenditures from board funds for HCLB and BOLB for FY 2003:

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**Table 3**  
**HCLB and BOLB Board/Program Expenditures**  
 Fiscal Year 2003

<i>Expenditure Category</i>	<i>Health Care Bureau (HCLB)</i>	<i>Business Bureau (BOLB)</i>	<i>Combined Total</i>
Personal Services	\$657,285	\$842,005	\$1,499,290
Operating	\$1,721,057	\$1,968,468	\$3,689,525
Other	–	\$26,362	\$26,362
<b>Totals</b>	<b>\$2,378,342</b>	<b>\$2,836,835</b>	<b>\$ 5,215,177</b>

**Source: Compiled by Legislative Audit Division from SABHRS data.**

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### **Changes in Department Organizational Structure**

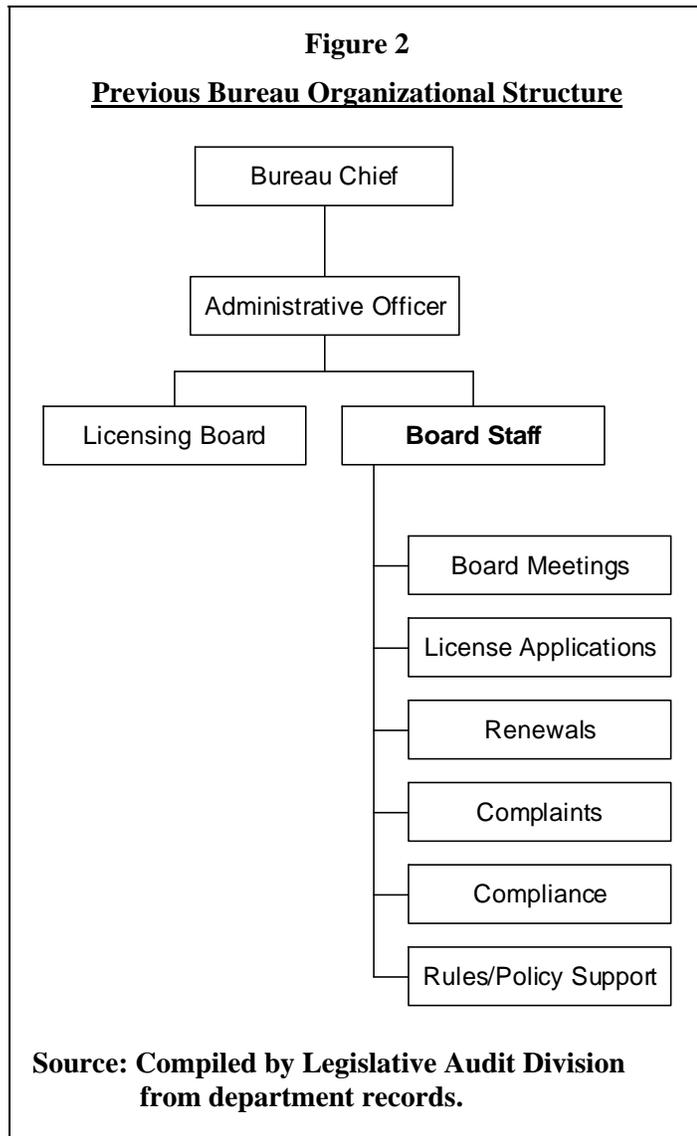
The administration of board activities has undergone significant changes over recent years. Following the 2001 legislative session, board administrative responsibilities were transferred from the Department of Commerce to the Department of Labor and Industry. Following the transfer, the Department of Labor and Industry conducted an internal review of the organizational structures of the two licensing bureaus to identify strengths and weaknesses. Based on this review, the department developed management reorganization plans for both bureaus. Implementation of these plans began in FY 2004.

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### **Previous Organizational Structure**

Previous organizational structure was vertically integrated. Administrative functions associated with board activities were concentrated in a single organizational unit (sometimes this was a group of staff, more usually it was a single staff member). The two bureaus consisted of separate and largely autonomous organizational units. Staff in each unit were responsible for all administrative procedures associated with a board and reported directly to the Bureau Chief, with limited intervening management supervision. The following figure illustrates the vertical structure:

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### **Problems with Vertical Management Structure**

The department identified several inter-related problems with the previous organizational structure used in licensing bureaus:

- ▶ **Supervision** – The Bureau Chief’s ability to effectively supervise 18-20 separate organizational units was limited. There was no intervening management level to assist in day-to-day supervision of board activities.
- ▶ **Standardization** – Lack of department supervision leads to increasingly independent decision-making. As department management control is diminished, promoting uniformity in

## Chapter II - Board and Department Organization

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administrative procedures for different boards becomes more difficult.

- ▶ **Skills and knowledge** – Concentration of all administrative functions in one organizational unit also concentrated board-specific skills and knowledge with one staff member (or 2-3 at most). This presents problems when an individual is not available to deal with inquiries or leaves the department's employment.

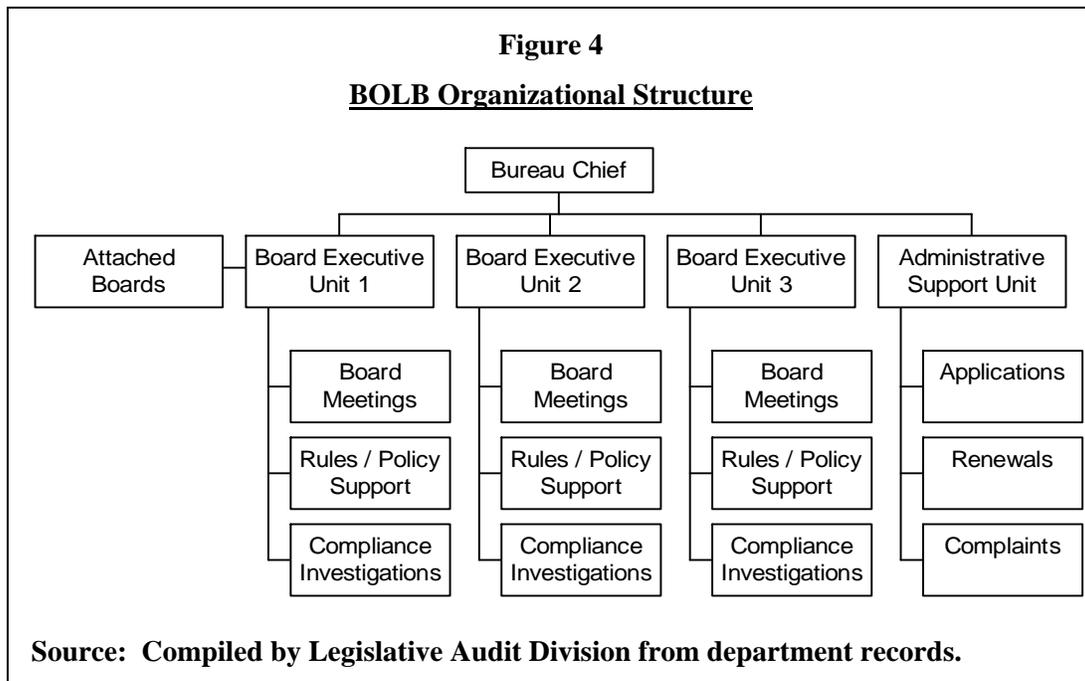
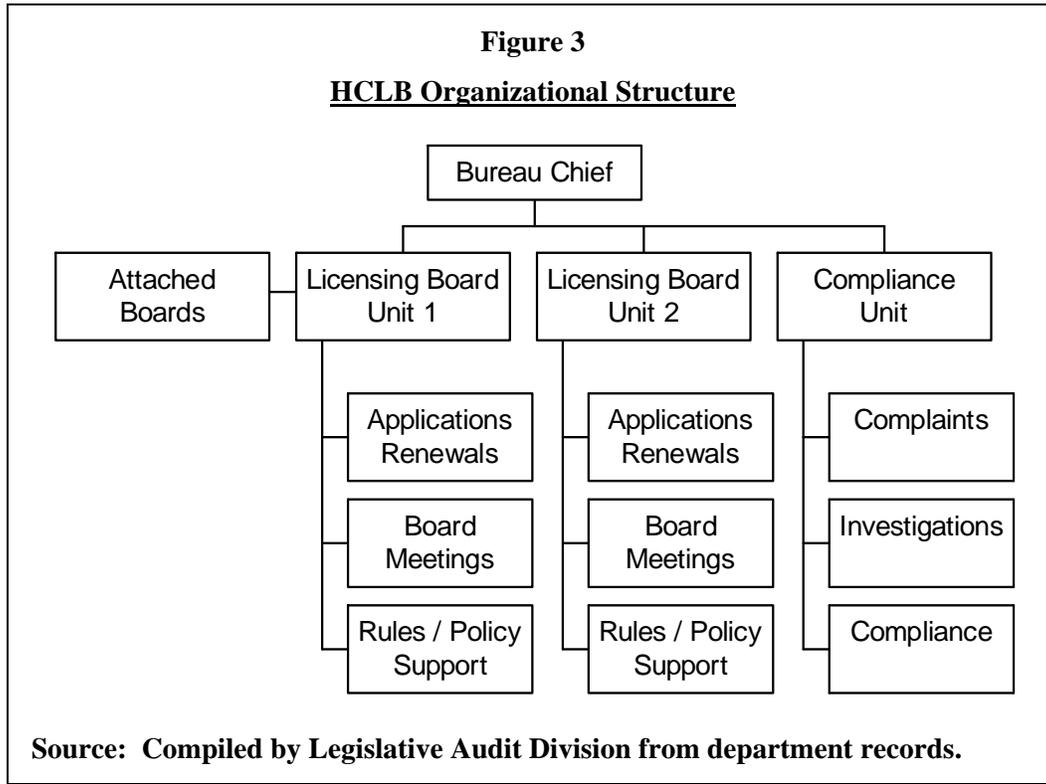
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### Management Reorganization Plans

Under reorganization plans, the department identified administrative functions common to all boards and grouped staff responsible for these functions in defined organizational units. The resulting structure does not use individual boards as the basis for organizational units. Administrative functions define the type of organizational units. Following implementation of reorganization plans, bureaus now consist of 3-4 organizational units, each unit has a supervisor reporting directly to the bureau chief and staff specialize in defined administrative duties.

HCLB and BOLB implemented different organizational structures to reflect management approaches based on functions associated with administrative and disciplinary procedures. HCLB emphasized organization based on functions associated with disciplinary procedures (complaints processing, investigations and compliance activities). BOLB emphasized organization based on administrative support functions provided for boards (applications, renewals, and complaints processing). The following figures illustrate the new HCLB and BOLB structure:

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### Conceptual Benefits of New Organizational Structures

New organizational structures present several conceptual advantages over the previous approach:

- ▶ **Supervision** – Organizational units are supervised by Executive Officers (BOLB) or Unit Supervisors (HCLB) reporting to the bureau chief. This intervening management level supervises fewer staff and should have improved knowledge of day-to-day operations. By distributing supervisory duties, the department can expect to exercise a greater level of control over administrative activities.
- ▶ **Standardization** – Grouping shared administrative functions in defined organizational units should promote consistency between boards. Bureau management should be able to develop standardized policies and procedures. By pooling functions for all boards, the department should be able to identify and remedy inconsistencies between board procedures.
- ▶ **Skills and knowledge** – Grouping staff in functional units should allow for better distribution of staff skills and knowledge. There should be more opportunities for cross training and problems associated with lack of expertise due to staff absences should be minimized. Where staff are assigned a more limited range of functional tasks, there are more opportunities for developing specialist skills and process efficiency improvements.

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### Implementation of Management Restructuring

The department identified significant management control issues under the previous structure. The reorganization plans could strengthen management controls and deliver improvements in administrative services provided to boards, licensees and the public. However, the potential benefits of the reorganization plans are only conceptual in nature. The following recommendations are intended to provide additional guidance to the department during the implementation phase of the reorganization.

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### Updating Policies and Procedures

Managing organizational change should involve review of policies and procedures to maintain continuity between policy and practice and coordinate management control activities in different organizational units. The diversity of groups involved in board activities presents a considerable management control challenge. If policies and procedures are not effectively coordinated, the

## **Chapter II - Board and Department Organization**

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department's ability to achieve consistency between different boards and deliver services effectively is jeopardized.

One area where revisions are needed is the duties of new unit supervisors. Current procedures do not address the roles and responsibilities for this new management level. For example, both bureaus centralized the complaints processing function. The department needs to ensure new procedures are developed to coordinate the workload of this new organizational unit with board screening panels and department legal staff.

In addition, we believe the department needs to address coordination of policies and procedures between different organizational units. A recent example of problems resulting from lack of coordination is the development of procedures addressing administrative rule writing. The department made efforts to remedy problems relating to the technical development of administrative rules (a process coordinated between bureau staff, attorneys in the legal support unit and the boards themselves). These efforts included a review of existing practices and the development of uniform procedures. By extending this approach to all administrative procedures where a high level of coordination between different entities is required, the department should promote consistency between boards and ensure more effective delivery of services.

---

### **Management Information Reporting**

There are currently no defined procedures for the compilation and distribution of management information relevant to board activities. The department has no procedures covering the distribution of management information reports, both internally within the department and externally with board members or licensees. The department's ability to effectively administer board activities is impaired when managers do not have access to relevant and timely data. For example, due to limitations in reporting capabilities, the department has no reliable methodology for quantifying timeframes for application processing. Management needs information in this area to correctly identify and remedy problems.

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Following implementation of management reorganization plans and anticipated improvements in data collection capabilities, the department should establish procedures for the compilation and distribution of management information relevant to the administration of board activities.

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### **Performance Measurement Procedures for Management Reorganization**

Management reorganization is expected to deliver benefits for the department, boards and licensees. However, the department has not identified quantifiable performance measurement parameters and there is no defined process for compiling and analyzing performance measurement parameters. As part of reorganization plans, the department did not establish relevant benchmarks, goals/targets or timeframes for use in evaluating performance.

Review of documentation relating to reorganization plans showed the department pursued a structured approach to identifying relevant performance issues and process changes that could effect improvements. However, this effort was not extended to establishing quantifiable performance measurements that would allow the department to assess the effectiveness of the reorganization. The department has indicated reorganization plans are a work in progress and has accepted the need to maintain a degree of flexibility in implementing change. However, because of the lack of defined performance measurements, the department will have no way of quantifying what has been achieved or identifying what is working and what is not.

The department should develop and implement performance measurement procedures relevant to ongoing efforts to change management structures of HCLB and BOLB. Although performance measurement procedures are, ideally, put in place prior to major reorganization, the department is at an early stage of implementation and should be able to develop appropriate procedures as part of ongoing efforts.

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### **Additional Guidance for Management Reorganization**

Continuing efforts by the department to identify and remedy weaknesses in administrative procedures should lead to further

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improvements in the delivery of services to boards and licensees. The proposed organizational changes should allow the department to identify areas where increased standardization in administrative procedures can be pursued and where operational efficiencies can be realized. The department can maximize the benefits derived from management reorganization by addressing the three issues outlined previously.

The department has responded positively to these issues and is in the process of implementing changes in administrative policies and procedures, management information collection and reporting, and performance measurement activities.

### **Recommendation #1**

**We recommend the department continue to pursue improvements in administrative efficiency and effectiveness by:**

- A. Updating and revising administrative policies and procedures.**
- B. Developing compilation and reporting standards for management information.**
- C. Establishing performance measurement procedures to assess progress in implementing management reorganization plans.**

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### **Management Memorandums**

During our review of board and department organizational structures, further issues were raised that are not addressed in report recommendations, but which warrant management consideration:

- ▶ **Board membership and department staff citizenship requirements** – Review of statute identified board member and department staff positions where United States citizenship was a requirement for appointment/employment. The department has indicated revisions to statute will be pursued to remove citizenship requirements, except where there is a rational justification for use.

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- ▶ **Board member appointments** – The Governor’s Office should standardize documentation procedures for board member appointments to provide additional assurance of compliance with statutory membership requirements.
- ▶ **Board meeting arrangements** – The department should address procedures for posting board meeting dates, times and locations, and distributing meeting agendas and minutes.
- ▶ **Standardized application forms** – The department should identify and assign responsibilities relating to the standardization of licensure forms.

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### **Overall Conclusion**

The relationship between boards and the department has changed over time to reflect legislative guidance for the overall direction of professional regulation. Board structures have been adapted to ensure representatives of the general public can play a full and active role in board activities. The department’s organizational structure has also been adapted to reflect trends in professional regulation, both in Montana and across the country. The most recent organizational changes made by the department should be seen as further attempts to strengthen administrative oversight and realize efficiencies in the delivery of services to boards and licensees.

# Chapter III - Licensing Fees and Board Finances

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## Introduction

Professional licensing is funded entirely through state special revenue provided by fees paid by licensees and license applicants. Licensing fees fund all board activities and the department's administrative services. Over the past two fiscal years (FY 2002 and FY 2003), licensing fees generated approximately \$5.35 million in average annual revenues. Fee revenues generated by each board and program are paid into separate designated funds.

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## Funding Professional Regulation in Montana

As the regulatory authority, a board is responsible for determining fee amounts. However, the department, as the administrative authority, plays a significant role in determining how funds are expended. Setting appropriate fee amounts is important. It protects licensees from excessive fees not required to support regulation and it helps reduce costs for consumers. Numerous empirical studies, including one conducted by the Federal Trade Commission, have shown licensing fees are a pass-through cost for consumers.

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## Statutory Guidance on Fees and Finances

Statutes relating to fees and finances outline a complex system of checks and balances. Fees are required to be commensurate with regulatory costs, and the department's role in approving expenditures ensures costs are subject to scrutiny (through the biennial budgeting process).

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## HJR 20 Guidance and Audit Objectives

HJR 20 requested we examine licensing fees to ensure they are commensurate with the costs of regulation. HJR 20 also requested we review board fund balances to ensure they are sufficient for board operations. We developed two audit objectives based on HJR 20. The first objective was to determine if procedures used in setting fees ensure fees are commensurate with costs. The second objective was to determine if board funding is sufficient. To meet these objectives, we developed methodologies in three inter-related areas:

- ▶ Comparative analysis of fee types and amounts.
- ▶ Compliance with laws relating to cash balance limitations.

## Chapter III - Licensing Fees and Board Finances

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- ▶ Assessment of department administrative costs against board funds.

The following sections include findings and recommendations relating to these review elements.

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### Fee Types and Amounts

Licensing boards are granted significant statutory authority over setting fees. Section 37-1-134, MCA, the main statutory reference for licensing fees, requires boards to set fees commensurate with costs. Fees are also required to be reasonably related to respective program areas, defined as “application, examination, renewal, reciprocity, late renewal, and continuing education”.

Boards exercise wide latitude in deciding the type of fees used and fee amounts. Boards are accorded this degree of latitude because of differences between the number of licensees they regulate, and the scope of their regulatory activities. For example, the Board of Nursing has over 15,000 licensees, and has more regulatory activity compared with a board with less than 100 licensees. Variations in the scope of board activities inevitably result in differences between fee types and fee amounts.

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### Fee Revenue Comparison

We began our analysis of fees by looking at revenues derived from different program areas. We identified revenues in three broad categories; first-time applicant fees, renewal fees, and administrative service fees. We then compared these categories for all boards to identify any anomalies. This is one method of determining if fees are commensurate with costs. Regardless of the number of licensees, every board should derive a similar proportion of revenues in each of these categories. For example, a board with 10,000 licensees generates 25 percent of revenues from new applicants, 70 percent from renewals and 5 percent from administrative services. Even though a board with 1,000 licensees has significantly less total revenue, it is reasonable to expect this board will source revenues in similar proportions to the large board. If the smaller board derives 50 percent of revenues from new applicants, 30 percent from renewals, and 20 percent from administrative services, further

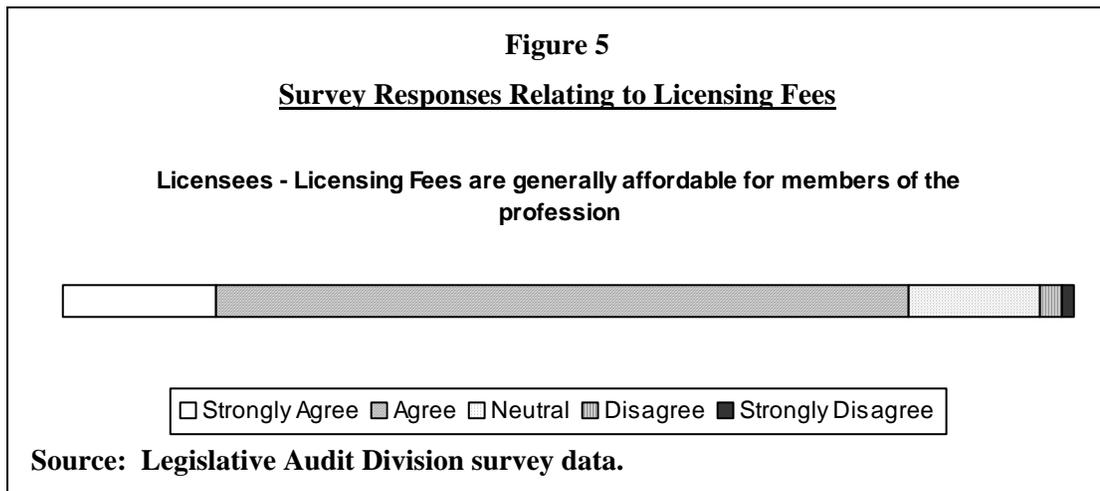
## Chapter III - Licensing Fees and Board Finances

examination of fee types and amounts is needed to determine if they are commensurate with costs.

We reviewed revenues in the three main categories for all 32 boards. By comparing the percentages against each other, we could identify boards where there is significant imbalance in revenues. We did not identify any problems for 24 boards. For the remainder, we conducted more detailed analysis and determined the revenue imbalance was attributable to either a very small licensed population, or specific regulatory circumstances. The general trend shows boards derive around 7-8 percent more revenues from new licensees when compared with the actual proportion of new licensees. This should be considered appropriate, as the administration of new license applications generally involves more effort compared with renewals.

### Survey Results Relating to Fees

We analyzed responses from our online licensee survey. Overall, these showed 77 percent of the licensees we surveyed thought fees were generally affordable for members of their profession. Response data is presented in the following figure:



### Information from Other States

A third method for determining if fees are commensurate with costs is comparing fees in Montana with boards in other states. Comparison of licensing fees for a sample of equivalent boards in Montana with six other western states showed fees in Montana are

## Chapter III - Licensing Fees and Board Finances

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generally similar. The following table shows average fee amounts for initial licensure (first-time applicants), license renewal, and reciprocal applications (applicants with existing licenses in other states):

**Table 4**  
**Comparison of Montana Licensing Fees with Fees in Other States**

<i>License Application Category</i>	<i>Montana Average Fee</i>	<i>Other States Average Fee</i>
First-time	\$159	\$171
Renewal	\$122	\$156
Reciprocal	\$234	\$213

**Source: Compiled by Legislative Audit Division from department data and information from other states.**

Although license applicants with existing licenses in other jurisdictions tend to pay more in Montana, the majority of applicants (either first-time or renewing) pay less in Montana when compared with other states.

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### **Are Fees Commensurate for Respective Program Areas?**

Review of fee revenues, licensee opinions, and fees in other states showed fee types and amounts for first-time applicants and renewals ensure fees are commensurate with costs. However, fees for administrative services are not commensurate with costs. Boards assess various fees for administrative services, including fees for providing license verification to other jurisdictions, and fees for providing document copies or for replacing a lost license.

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### **Variations in Administrative Service Fees**

There are significant variations in administrative service fees charged by different boards. For example, different boards charge

## Chapter III - Licensing Fees and Board Finances

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licensees fees ranging from \$15 to \$40 for document copying, \$5 to \$30 for issuing a duplicate license, and \$5 to \$35 for license verification.

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### **Administrative Services Fees are Not Commensurate With Costs**

The per-unit costs incurred by the department in providing specific administrative services do not vary between boards. The administrative cost of issuing a duplicate license is the same for all licensees in all boards. Fees associated with administrative services must, therefore, be applied at the same level for all boards to be commensurate with costs. Administrative fees currently assessed by licensing boards are not commensurate with the cost of the service.

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### **Assigning the Department Responsibility for Administrative Fees**

Variations in administrative fees have occurred because statute as currently written encourages a diversity of approaches to setting administrative service fees. It is easier to ensure fees in other categories are commensurate with costs because they provide overall funding for different program areas. For example, renewal fees generate revenues funding multiple program areas, so the cost is not restricted to the provision of a specific service. However, administrative service fees fund the provision of a defined service and variations cannot be justified by board-specific requirements. As the administrative entity, the department is the service provider and the most suitable location for decisions relating to administrative service fees. By assigning the department authority for setting administrative service fees, a single uniform administrative fee schedule can be developed. Assigning the department authority should also allow for the development of defined procedures for identifying the actual cost of the service and setting a commensurate fee.

#### **Recommendation #2**

**We recommend the department:**

- A. Seek statutory authority to set uniform administrative service fees.**
- B. Develop procedures to ensure administrative service fees are commensurate with the cost of services.**

## Chapter III - Licensing Fees and Board Finances

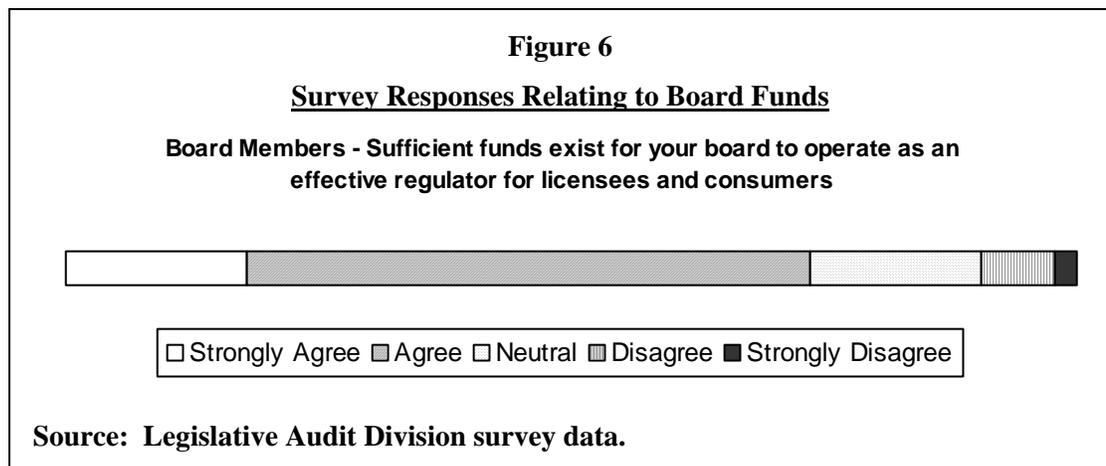
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### Cash Balance Limitations

All state agencies charging for services, including licensing boards, are required to meet certain balance requirements. Section 17-2-302 (1), MCA, limits the fund cash balance to twice the board's annual appropriation authority. This cash balance limitation acts as an important control on the process for setting licensing fees by limiting the amount of surplus cash a board can build-up.

### Survey Results Relating to Board Funds

In relation to our second audit objective, we included a question in the board member survey about the sufficiency of board funds to determine if board members think limitations on cash balances have a negative effect. Overall, board members responded positively when asked about funding for regulation. Survey results are shown in the chart below:



Negative responses showed members from four boards were concerned over the availability of funding. To determine if there were particular problems for these boards, we analyzed cash balance data to identify funding shortfalls. For three boards, the ratio of cash balances to expenditures indicated sufficient funding was available. For one board, the cash balance did not appear to be sufficient to meet expenditures. However, it should also be noted that boards with high expenditures and low numbers of licensees face choices in determining the scope of their regulatory activities. To stay within cash balance limitations, boards will sometimes have to choose to raise fees, reduce expenditures, or merge with another board regulating in the same professional area.

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### Findings from Financial Compliance Audit

In addition to surveying board members, we also reviewed information from the FY 2003 Legislative Audit Division Financial Compliance Audit Report (#03-24) for Montana Department of Labor and Industry. The report included assessment of cash balances for all licensing boards. This audit identified seven boards with excessive cash balances. Excessive balances varied between \$2,335 and \$73,424. The total value of the excess balances was almost \$160,000. The Financial Compliance Audit Report included a recommendation requiring these boards to take action to eliminate excess cash balances.

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### Improvements Needed in Responding to Excess Balances

Cash balance limitations appear to be working well as part of the overall statutory framework of professional regulation. A majority of board members think sufficient funding exists for board regulatory operations. The minority of boards running excess cash balances are in the process of taking action to reduce the surplus funds. However, our review of board responses to excess cash balances showed some improvement is necessary in the procedures used in these circumstances.

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### Boards' Responses to Excess Balances

Responding to an excess cash balance should involve returning money to licensees through temporary fee adjustments. Adjustments should be governed by the same principles used in setting fees and should distinguish between respective program areas. The response should also be as timely and efficient as possible. Our review of the seven boards with excess balances showed responses were not meeting these requirements. Current procedures do not ensure excess balances are reduced in compliance with the law, as fee reductions are not based on respective program areas. For example, one board reduced renewal fees for one license category, but did not extend the rebate to renewing licensees in another category, depriving them of a fee reduction. Responses are also delayed because temporary fee adjustments cannot be made without time-consuming rule writing. In addition to the usual rule-writing timeframes, seeking board approval for changes can further delay the process. Because adjustments are only temporary, the process must be repeated to return fees to previous levels. If multiple boards

## Chapter III - Licensing Fees and Board Finances

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require fee adjustments, each board must independently revise its own rules.

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### Department Should Seek Statutory Authority for Temporary Fee Adjustments

To improve boards' ability to respond to excess cash balances, the department should be given statutory authority to make temporary fee adjustments. Boards should delegate their authority over temporary fee adjustments to the department in cases where cash balances exceed limitations defined in statute. The department should develop procedures outlining the range of responses necessary to reduce an excess balance, including the appropriate order in which licensees in different categories should benefit from fee reductions. If boards delegate their authority over temporary fee adjustments to the department, the extra time and cost associated with enacting changes individually for each board can be avoided. For those boards responding to findings in the Financial Compliance report, six sets of rule revision proceedings will be necessary to correct problems with excess balances. By implementing the following recommendation, boards can avoid the extra costs associated with rule writing and ensure their licensees receive the full benefits of fee reductions.

#### **Recommendation #3**

**We recommend the department work with licensing boards to improve responses to excess cash balances by:**

- A. Seeking statutory authority for temporary fee adjustments.**
- B. Developing model administrative rules defining procedures for temporary fee adjustments.**

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### Department Administrative Costs

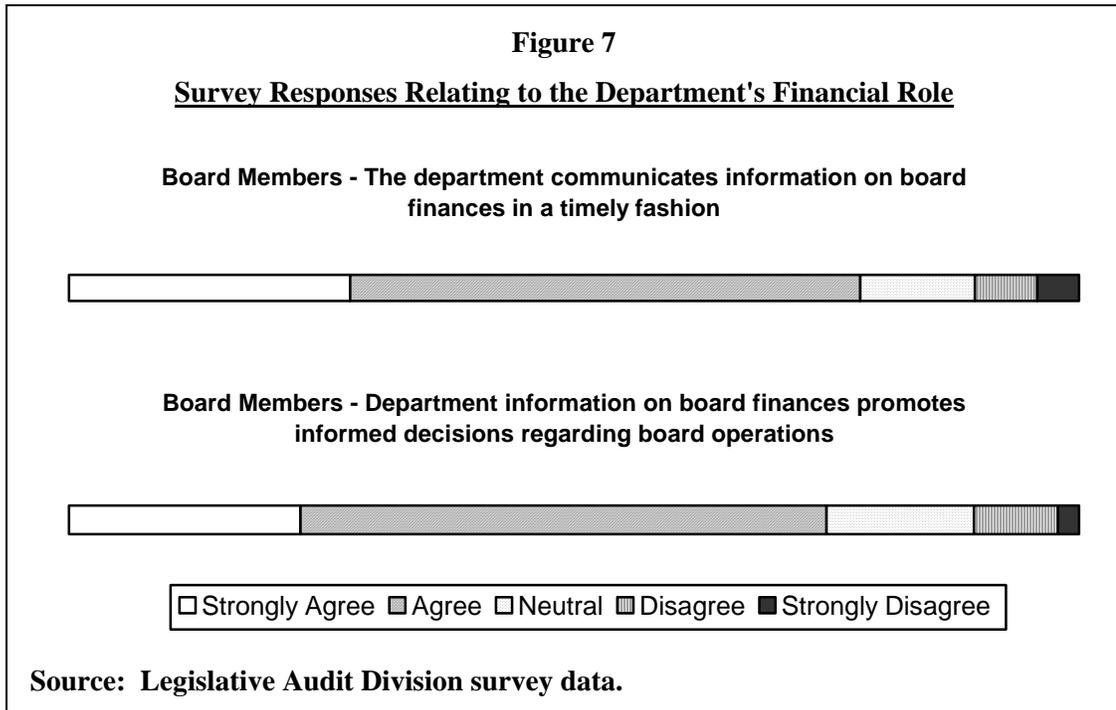
The final part of our analysis of licensing fees and board finances related to the assessment of department costs. Statute authorizes the department to assess administrative costs against board funds on an equitable basis and requires boards pay their share of these costs. Additional statutes also assign all staff hiring decisions and expenditure approvals to the department. The department recently made changes in the methodology for calculating administrative

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support costs. The previous methodology resulted in boards with large numbers of licensees subsidizing boards with fewer licensees. New procedures calculate support costs based on actual staff time for each board. These changes have resulted in some boards paying more and others paying less. However, the new procedures have eliminated the problem of cross-subsidization between boards and also ensure administrative support costs are allocated equitably.

### Survey Results Relating to the Department's Role in Board Finances

Our survey of board members contained several questions relating to the department's role in relation to fees and board finances. We asked various questions to determine if board members are satisfied with the department's procedures for communicating information about board finances. Overall, responses showed board members view the department's efforts in this area positively. The chart below shows responses to questions relating to department financial information:



### How are Administrative Support Costs Calculated?

Overall expenditures from board funds are currently around \$5.2 million annually. Of this total, approximately \$3 million (60

## Chapter III - Licensing Fees and Board Finances

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percent) is for board spending on specifically allocated staff or other costs directly attributable to board activities. Remaining expenditures of around \$2.2 million (40 percent) cover the department's administrative support costs. Costs are assessed against board funds as non-discretionary spending. The administrative support or recharge amount covers costs associated with administrative services shared by all boards and includes bureau staff and operating expenditures, legal staff and resources, and division-level management and information technology resources.

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### Changes in Cost Calculation Procedures

Previously, administrative support costs were calculated as a fixed proportion of a board's appropriation authority. This method was relatively simple, but it did not reflect the actual cost of services provided to the board by the department. The previous method did not allocate costs equitably because some boards were subsidizing the operations of others.

The department has recently instituted changes in the methodology for calculating administrative support costs. The new approach focuses on staff resources as the primary service provided for boards. The department now calculates costs based on time distribution analysis for staff, which provides a more accurate reflection of the actual resources allocated to each board. Our review of the department's calculations and the administrative support costs assessed for FY 2004 show the staff allocation method ensures department costs are allocated equitably.

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### Management Memorandum

During our review of department administrative costs, a further issue was raised that is not addressed in a report recommendation, but which warrants management consideration. The department's new procedures for calculating administrative support costs are based on an initial six-month snapshot time distribution analysis. The department needs to continue adjusting overhead costs based on ongoing use of time distribution analysis and ensure all staff functions are included. The department has responded to this issue and is addressing the concern.

## Chapter III - Licensing Fees and Board Finances

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### Overall Conclusion

Montana's comprehensive statutory framework governing licensing fees and board finances is functioning as intended. At a basic level, a comparison of total revenues and total expenditures shows boards take-in only slightly more revenue than they expend. Combined with fund cash balance controls, this provides good assurance that licensing fees are commensurate with the cost of regulation. Licensing fees and board financial arrangements command wide support among board members and licensees and Montana's fees compare well with other states. Although a minority of board members have concerns over fund balance, there is no evidence of serious deficiencies in the current funding structure.



# Chapter IV - License Application

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## Introduction

Establishing licensure requirements is a fundamental part of a board's regulatory role. All licensees are required to go through the application process. Although requirements vary according to different professional standards, applicants generally have to meet minimum educational and professional experience requirements. It is also important to note that licensure is a continuous process and licensees are required to renew their credentials periodically.

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## HJR 20 and Public Protection

HJR 20 requested we examine boards' educational and experience requirements to ensure they protect the public rather than limit access to a profession. HJR 20 emphasizes the potential for licensure requirements to be applied too stringently by boards. If requirements go beyond prevailing standards, the economic interests of existing licensees could be promoted at the expense of new entrants to the profession. Reduced competition within a profession can lead to higher consumer prices.

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## Pew Commission Report on Professional Regulation

The Pew Commission, a national public policy research organization, conducted one of the most recent and most authoritative public policy studies on professional regulation. Although this work focused on the health care sector, it is generally applicable to all professions or occupations where regulatory authority is assigned to a board dominated by professional interests. In relation to public protection, the introduction to the 1998 report "Strengthening Consumer Protection: Priorities for Health Care Workforce Regulation" states the following:

"The ostensible goal of professional regulation – to establish standards that protect consumers from incompetent practitioners – is eclipsed by a tacit goal of protecting the professions' economic prerogatives. This dichotomy of goals has created serious shortcomings that weaken the states' effectiveness as strong and unbiased consumer protection advocates."

## Chapter IV - License Application

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### Public Protection and Audit Objectives

In response to HJR 20 guidance, we developed an audit objective addressing the issue of public protection. Our objective was to determine the extent to which the regulatory powers conferred on boards serve to protect the public interest rather than restrict access to professions or occupations. Although HJR 20 identifies specifically education and experience requirements as issues, we expanded our review to include a broader range of regulatory activities. The following sections discuss public protection in relation to three aspects of professional licensing:

- ▶ Licensure process and the department's administrative role.
- ▶ Education and experience requirements applied by boards.
- ▶ Reciprocity arrangements for licensees from other states.

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### Licensure Process

The department receives an average of around 7,000 new license applications annually. In addition to fees, applicants submit various documents, including an application form, proof of educational qualifications and/or professional experience, or verification of licensure in another jurisdiction. Following receipt of these documents, an initial judgment can be made by the department on whether the applicant meets minimum requirements.

The licensure application process is supposed to protect the public by ensuring qualified and skilled individuals enter the profession. However, the process can, by itself, serve as a means of restricting access. If the licensure process involves cumbersome administrative procedures or unnecessary delays, new applicants may be discouraged from pursuing licensure.

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### Analysis of License Applications for FY 2002 and FY 2003

Applicants for professional licensure have usually completed a course of education to obtain qualifications or are licensed in another state. It should be expected that the majority of applicants are suitably qualified and should be good candidates for licensure. If there were problems with the licensure process, we would expect to see significant numbers of applicants being denied licensure.

## Chapter IV - License Application

We analyzed data for approximately 11,700 license applications received by the department during FY 2002 and FY 2003. The data showed application volumes varying in accordance with the size of the regulated profession. Data shows 88 percent of applications were approved and less than 1 percent of applications were denied over the two-year period. This could, by itself, suggest there are no significant problems with boards imposing unduly restrictive licensure requirements. This analysis is shown in the following table:

**Table 5**  
**License Application Outcomes**  
Fiscal Years 2002 & 2003

<i>Application Disposition</i>	<i>Number of Applications</i>	<i>% of Total</i>
Approved	10,328	88.2 %
Denied	97	0.8 %
Expired	44	0.4 %
Incomplete	514	4.4 %
Pending	692	5.9 %
Withdrawn	38	0.3 %
<b>Total</b>	<b>11,713</b>	<b>100 %</b>

**Source: Compiled by Legislative Audit Division from department records.**

For the 97 denied applications, we performed additional testing to ensure specific boards were not denying a disproportionate number of applications. Although some boards tend to deny more applications than others, the variance is not significant enough to suggest there are problems with application procedures for particular boards.

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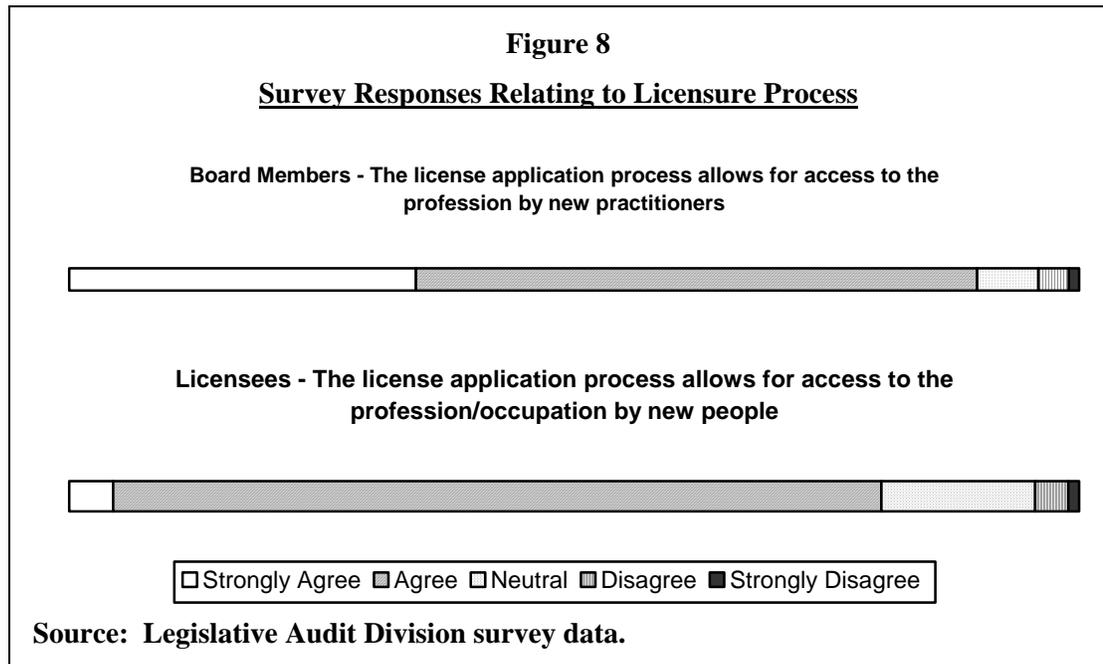
### Survey Results Relating to Licensure Process

We included questions in our surveys of board members and licensees relating to their overall perceptions of the licensure

## Chapter IV - License Application

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process. Overall, responses showed both board members and licensees think the licensure process ensures their profession is accessible to new applicants. The results are shown in the chart below:



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### Timeliness of Licensure Process

As a further test of the accessibility of the licensure process, we reviewed process timeframes to determine if there are any unnecessary delays, which could discourage new applicants. Process timeframes vary depending on documents submitted, examination requirements, and applicant compliance with instructions. Due to limitations in available data, it was not possible to define process timeframes in all instances. Review of the application process showed the majority of boards ensure process timeframes are reduced as much as possible. Although some applicants can be delayed by examination scheduling, for most the licensure process is designed to expedite processing of applications. However, we identified some circumstances in which application processing times can be extended by boards requiring a separate review of applications by a board member or full board prior to license issuance.

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### Board Review of Applications

Department staff currently screen all applications for all boards, but eleven boards (35 percent) currently require separate review of applications prior to license issuance. Separate review is a practice the majority of boards have abandoned. During these reviews, board members use the same criteria department staff apply in the initial application review. Two thirds of boards rely solely on department expertise in assessing minimum licensure requirements. When separate board review is required, the applicant can expect to wait longer for a decision. We reviewed application forms for five boards requiring separate review and the average estimated turnaround time was 60 days, compared with 14 days for boards without a separate review requirement. Separate review requirements could unnecessarily extend processing times by up to six weeks and could have a detrimental impact on licensees' employment opportunities or business productivity.

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### Developing Standardized Licensure Procedures

Continuing separate review should be directly related to the perceived need for professional scrutiny of applications when there is doubt over educational/experience information, or disciplinary history (non-routine applications). This could be justified where no alternative mechanisms exist for providing professional scrutiny of non-routine applications. Many boards already have a well-established process allowing boards to subject certain applicants to increased scrutiny. Department staff frequently refer non-routine applications to board screening panels in situations when information indicates the applicant may not meet minimum licensure requirements.

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### Review Requirements in Other States

Review of application procedures for 66 equivalent boards in six other states showed separate board review requirements are not as prevalent. Only 20 percent of boards in other states use a mandatory separate review process. Eighteen percent of boards have a permissive statutory or rule-based requirement allowing them to require an interview with applicants in some circumstances. Forty-four percent of boards do not have any statutory or rule-based authority for secondary review requirements. Montana boards could

## Chapter IV - License Application

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adapt licensure procedures to reflect regional trends in the use of separate board review.

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### Department Responsibility for Application Review

To ensure applicants receive efficient and timely services, boards should clarify responsibilities for license application review procedures. Where necessary, statutory or rule-based authority for initial review of applications could be delegated to the department. In addition, the department should develop policies and procedures or, if appropriate, model administrative rules, defining a standardized application review and approval process. Standard procedures should include criteria for referral of non-routine applications to board screening panels. Boards can delegate authority over initial application review without neglecting their regulatory duties. Boards can remain involved in the process through periodic review of department staff reviewing applications.

#### **Recommendation #4**

**We recommend the department work with licensing boards to delegate responsibility for review and approval of routine applications to department staff.**

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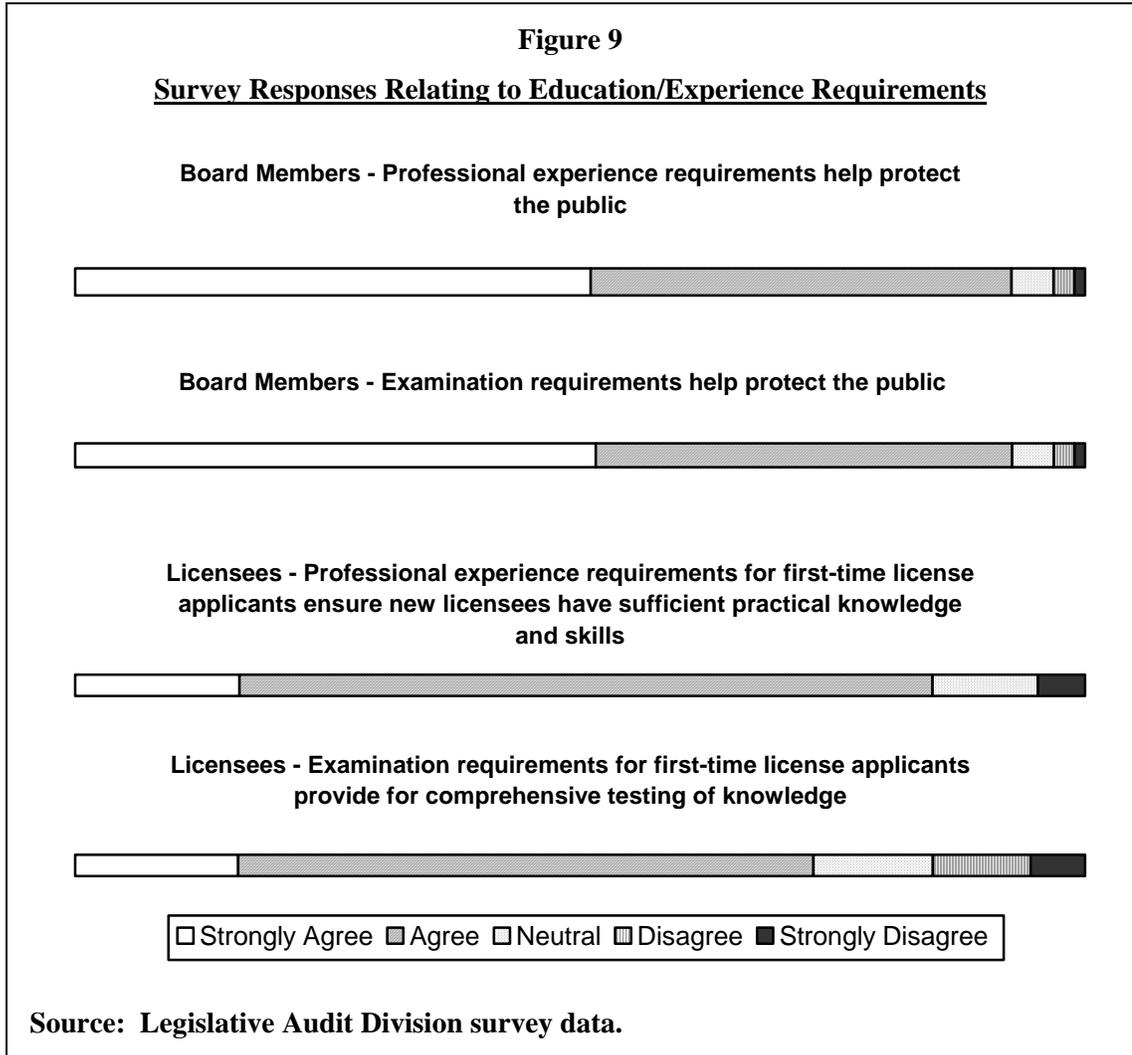
### Education and Experience Requirements

The second part of our review of the license application process focused on educational and experience requirements. Licensure requirements need to be stringent enough to ensure only qualified and skilled individuals can practice a profession. However, the requirements should make reasonable allowances for new applicants and should reflect national professional standards, or they could exclude well-qualified applicants. Again, there is a wide variation between requirements established by different boards, reflecting permissive statutory guidance in this area and the variety of standards for different professions.

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### Survey Responses Relating to Education and Experience Requirements

We asked several questions relating to education and experience requirements to board members and licensees to determine if there are concerns in this area. The results are shown in the chart below:



Although responses show licensees are less positive about education and experience requirements, the overall result indicates the regulated community is satisfied about education and experience requirements as currently established. We reviewed survey responses from licensees who had been licensed less than one year to determine if recent entrants to professions had different views from long-term licensees. There were no significant differences in responses, suggesting those licensees with the most immediate experience of licensure requirements do not have concerns in this area.

## **Chapter IV - License Application**

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### **Licensure Requirements in Other States**

Our review of education and experience requirements in other states confirmed the impression of the regulated community in Montana. Montana boards have similar education and experience requirements when compared with other states. Ninety percent of boards in Montana use nationally standardized examinations, compared with 85 percent in other states. Using standardized exams indicates conformity with nationally accepted professional standards.

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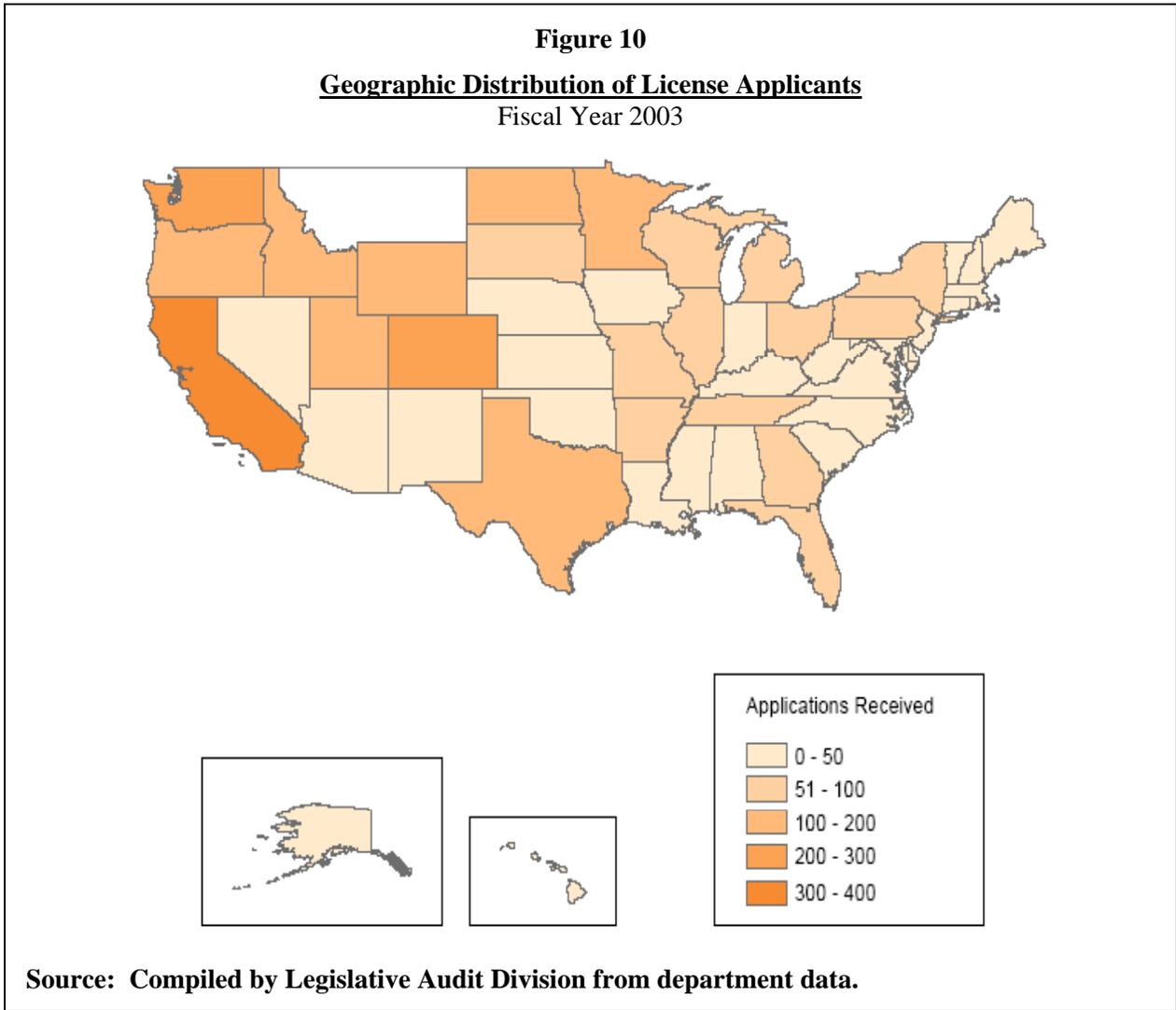
### **Reciprocity with Other States**

A third feature of the licensure process we examined was reciprocal licensing arrangements with other states. Reciprocity for licensees from other states is an important element of professional regulation. Facilitating the licensure of suitably qualified licensees from other states promotes increased competition and benefits consumers. Boards can help the process by establishing reciprocity agreements with other states or streamlining application procedures for applicants from states with similar licensing requirements. If boards in Montana were not making efforts to facilitate licensure for qualified practitioners from other states, we would expect data to show significant variations in application outcomes for out-of-state applicants.

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### **Review of Applicant's State of Origin**

We examined available information from FY 2002 and FY 2003 on the proportion of license applicants from other jurisdictions. Around 30 percent of applications received originated from other states. Further review of the disposition of these applications showed no differences between the treatment of out-of-state applicants as compared with Montana applicants. Applicants from other states were no more or less likely to have applications approved, denied, or delayed. The geographical distribution of out-of-state applicants showed most were from northcentral and northwestern states. Significant numbers of applicants also came from more populous western and southwestern states, such as California and Texas. The following map illustrates the distribution of applicants:



**Overall Conclusion**

Review of the licensure process showed boards are using licensure requirements to protect the public, rather than limit access. Licensure requirements enjoy wide support among board members and licensees and are comparable with requirements in other states. The law allows boards wide latitude in establishing licensure requirements, but separates policy making from policy implementation by assigning administrative authority to the department. The division of regulatory and administrative authority has contributed to promoting public protection. As the department standardized administration of the licensure process, procedures for

## **Chapter IV - License Application**

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individual boards have tended to gravitate towards common standards.

# Chapter V - License Renewal

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## Introduction

All licensees are required to periodically renew their licenses to ensure skills are regularly updated or assessed through continuing education requirements. Renewal fees contribute a large proportion of the revenues necessary to fund ongoing regulatory activities. We addressed the renewal process both as a part of the licensure process and in relation to the department's administrative role in the process. As part of the licensure process, renewal is dependent on requirements established by boards. The department is statutorily responsible for setting renewal dates and terms for all licenses. Review of the renewals process was conducted to determine if board policies ensure the interests of the public are protected and department administrative procedures provide for effective and efficient services.

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## Board Renewal Requirements

Boards are responsible for setting renewal fees and determining if licensees need to meet continuing education requirements. Renewal fees are addressed in Chapter III of this report. To determine if renewal requirements are established to protect the public, we obtained input from board members and licensees and compared requirements in Montana with those in other states.

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## Survey Responses Relating to Renewal Requirements

Responses from board members and licensees indicated overall approval of continuing education requirements. Seventy-eight percent of board members and 76 percent of licensees agreed that continuing education requirements applied as a condition of licensure help protect the public. There was no difference between responses for public and professional board members, indicating those members appointed to serve the public interest are satisfied with renewal requirements.

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## Renewal Requirements in Other States

We also compared renewal requirements in Montana with those in other states. Significant variations in continuing education requirements would indicate Montana boards are applying standards at variance with accepted national professional standards. In our sample of ten equivalent boards from six other states, 60 percent of Montana boards established continuing education requirements,

## Chapter V – License Renewal

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compared with 75 percent of boards in other states. However, Montana boards in our sample require an annual average of 21 continuing education hours, compared with 15 hours in other states. Although variations exist, Montana boards appear to be conforming to national trends in continuing education requirements.

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### Department Renewal Procedures

The renewal process involves the department sending licensees a renewal form. The form generally requests information about disciplinary action against the licensee, continuing education hours, and name/address changes. Licensees must return the renewal form and fee before the expiration date of their license. The department processes 50,000 – 60,000 renewal applications annually.

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### Online Renewal

In 2002, the department began offering licensees the option of renewing online. Most licensees can now submit renewal information, pay fees and print their licenses via a website. The website and online renewal service are provided under contract to the department. In addition to the convenience of the service, using online renewal reduces administrative costs. Montana has made considerable progress in implementing online services and licensees here currently enjoy better access to online renewals services compared with licensees in some other states.

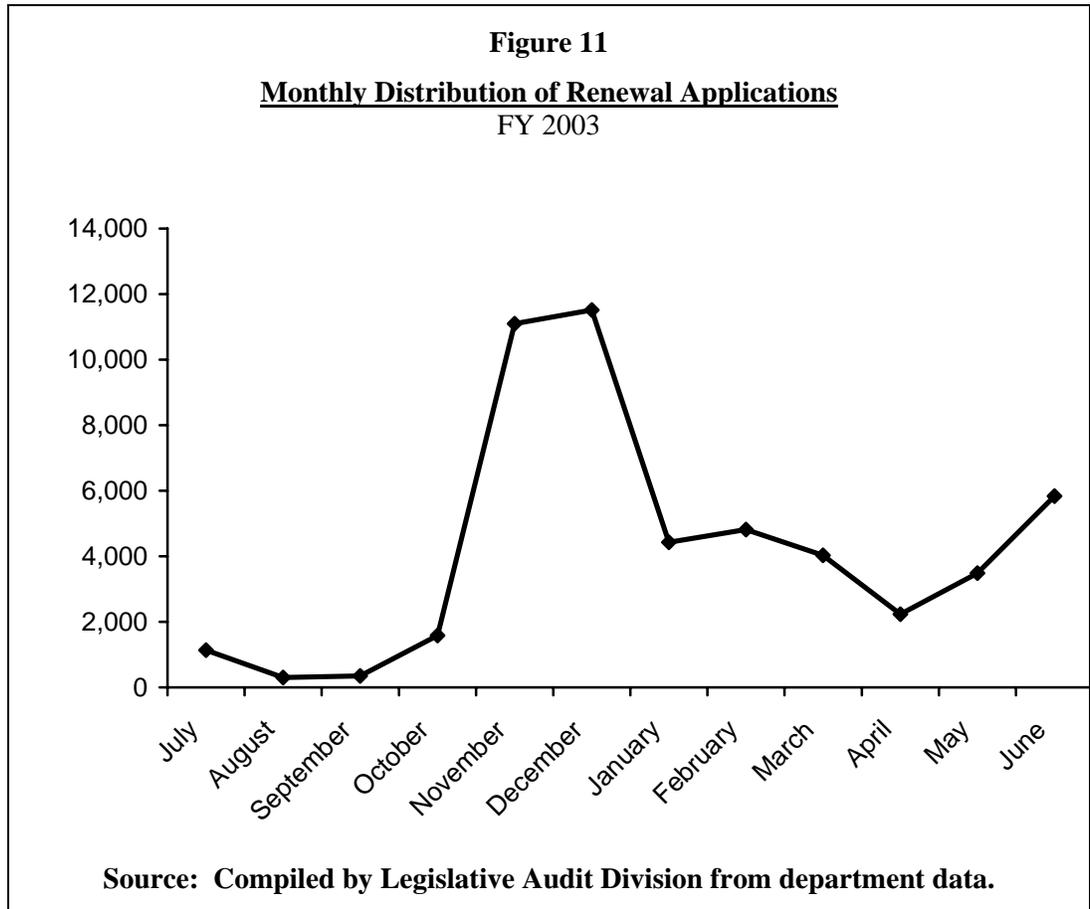
Online renewal has steadily increased in popularity. For the last three fiscal years, an average of 15 percent of all renewals were completed online. Trends suggest online renewals should continue increasing in the medium term. For nine boards where data exists, the average year-on-year increase in online renewal usage is 250 percent. This rate of increase will probably slow as usage increases, but the department can expect considerable improvements in the online renewal rate.

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### Renewal Cycles and Dates

Boards use different renewal cycles, requiring licensees to renew licenses either annually (80 percent), biennially (15 percent), or triennially (4 percent) on a fixed date. Some of the licensing programs administered by the department use continual renewal (licensees renew on an individual anniversary date). Statute assigns

the department sole responsibility for setting renewal dates and renewal cycles. We identified one problem area with renewal dates. The following chart illustrates the distribution of renewals through fiscal year 2003:



The current distribution of renewal dates does not ensure the renewal process is administered as efficiently as possible. For fiscal year 2003, 45 percent of total renewals took place in either November or December. The increased workload can result in the department contracting for temporary staff services. If the department could reduce the large spikes in renewal numbers, it should not be necessary to hire temporary staff. For FY 2002 and 2003, the department expended approximately \$77,900 for temporary services. Cost savings could be realized by changing renewal dates for boards renewing during the November/December period.

## Chapter V – License Renewal

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### Online Renewal is Restricted for Some Licensees

Despite success in implementing online renewal, approximately 11,400 licensees are currently unable to access the service. These licensees are restricted from using online renewal due to either of the following factors:

- ▶ **Verification of continuing education (CE) hours** – Some boards require renewal applicants to submit documentary evidence of completion of CE hours. This differs from the majority of boards (27 out of 32) which depend on the department conducting random audits of CE completion to verify compliance. Unlike the random audit approach, documentary verification of CE hours cannot be completed online.
- ▶ **Continual renewal cycles** – Three of the licensing programs administered by the department use continual renewal cycles, with licensees renewing throughout the year on a continual basis. Online renewal technology has not been adapted for continual renewal cycles.

Online renewal is a convenient service, which the majority of licensees are now benefiting from. For the 11,400 licensees being denied access to online renewals, department cost estimates show boards collectively foregoing up to \$7,400 in annual cost savings. These savings are only the department's direct costs (forms, printing and postage) and do not include indirect costs associated with application processing.

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### Department Should Pursue Standardization of Renewal Procedures

Adherence to tradition may be limiting consideration of new approaches reflecting administrative efficiency and technological developments in renewal procedures. Because the majority of boards have delegated the department authority over renewals, we believe existing administrative procedures should be extended to cover all boards where appropriate. The department should pursue revision of statute where this is necessary to achieve standardization in board renewal procedures.

**Recommendation #5**

**We recommend the department continue to standardize license renewal procedures by:**

- A. Evaluating renewals distribution and, where necessary, altering renewal dates for certain boards.**
- B. Pursuing revisions to statute to eliminate documentary verification of continuing education hours in favor of random audits to establish compliance.**
- C. Phasing-out continual renewal cycles in favor of fixed-date renewals.**



# Chapter VI – Compliance and Disciplinary Activities

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## Introduction

HJR 20 requested we review board disciplinary actions to ensure they “protect the public and are rational, impartial, and in compliance with state law and regulations.” Again, HJR 20 emphasizes public protection as a primary concern and also highlights the potential for bias in the disciplinary process. Consumers may be understandably skeptical about the ability of professionals to remain impartial during proceedings against their colleagues or business competitors.

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## Uniform Disciplinary Process

Section 37-1-316, MCA, outlines 18 specific categories of unprofessional conduct applicable to all licensed individuals. Unprofessional conduct is defined as including certain criminal convictions, contravening licensing law, false advertising, disciplinary action in other states, illegal drug addiction, misappropriating client funds, and assisting in unlicensed practice. Statute also accords boards wide latitude in defining, through administrative rule, standards of professional practice i.e. defining what a practitioner can and cannot do in the course of licensed practice. Boards also have jurisdiction over applicants for licensure and can prosecute applicants for unprofessional conduct.

The following chart outlines the disciplinary process from receipt of a complaint, through resolution and board sanctions:

Figure 12

Disciplinary Process Roles and Responsibilities

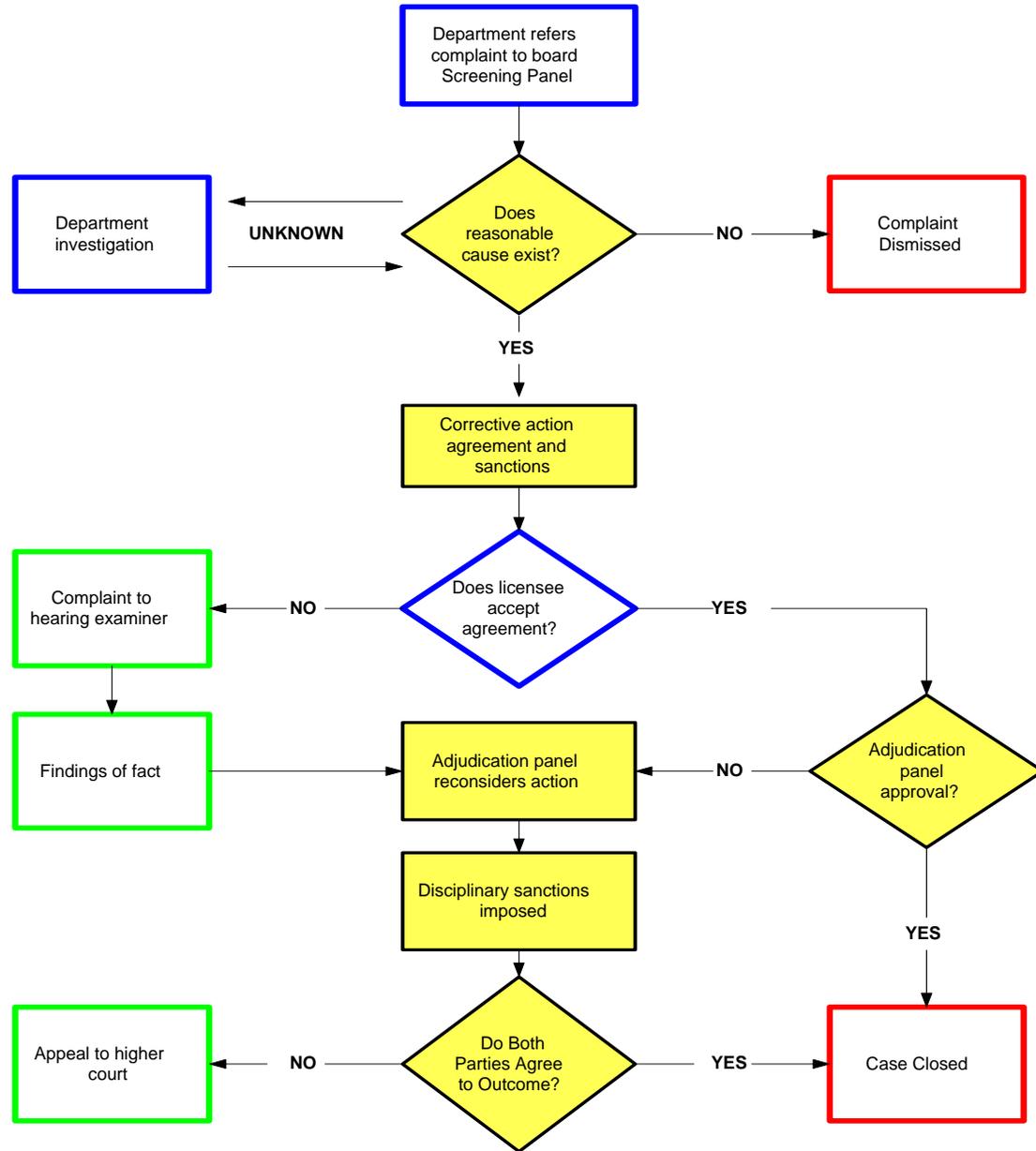
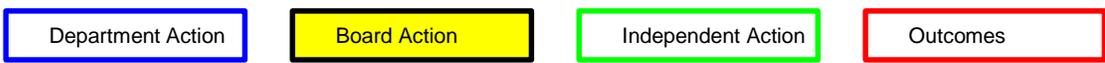


Figure Legend



Source: Compiled by Legislative Audit Division from department records.

The chart shows how roles and responsibilities in the disciplinary process are divided between boards and the department. The involvement of independent entities (hearings examiners and higher courts) is also shown. Board screening panels are subject to scrutiny through the department's role in complaints referrals, investigations and prosecutions. Screening panel decisions are then scrutinized further by the separately appointed adjudication panel and, in some cases, referral to a hearings examiner (appointed by the department).

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### Board Sanctions

Boards can impose a variety of sanctions ranging from letter of reprimand to license revocation. Other sanctions include administrative fines, limitations on practice, retraining, probationary periods, or license suspension. The department is responsible for enforcement of board sanctions. In cases of unlicensed practice, boards can issue cease and desist orders, but do not have jurisdiction over unlicensed individuals and rely on local authorities to prosecute.

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### Complaints Data and Statistics

To get an overall view of the complaints process, we reviewed department complaints and disciplinary data. We also used statistics from our representative file review of complaints for FY 2003.

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### Complaints Received

The department records the total number of new complaints received for each fiscal year. For the last four fiscal years, the department received an average of around 1,150 complaints annually. The department records complaints according to the type of violation. The largest number of complaints are recorded as 'misconduct'. This category covers a broad range of violations, many of which are administrative in nature (late renewal of licensure, for example). The second largest category, practice issues, records violations relating to the scope of practice of a profession. Remaining categories describe violations in more specific categories. The table below shows violation category percentages for FY 2003:

## Chapter V – License Renewal

**Table 6**

**Type of Complaints Received**

Fiscal Year 2003

<i>Violation Category</i>	<i>% of Complaints Received</i>
Misconduct	41 %
Practice Issues	31 %
Drug/Alcohol Related	12 %
Unlicensed Practice	8.5 %
Other	4 %
Criminal Conviction	2 %
Fraud/Deceit	1 %
Sexual Misconduct	0.5 %

**Source: Compiled by Legislative Audit Division from department records.**

### Source of Complaints

The following table shows the sources of complaints included in our file review:

**Table 7**

**Sources of File Review Complaints**

Fiscal Year 2003

<i>Complaint Source</i>	<i>% of Complaints Received</i>
Regulatory Action	26 %
Public / Consumers	19 %
Application Information	19 %
Department Compliance Inspector	13 %
Licensees	6 %
Employer	6 %
Employee	3 %
Union Representative	3 %
Other	5 %

**Source: Compiled by Legislative Audit Division from department records.**

Twenty-six percent of complaints in our file review resulted from regulatory action (usually a board acting on information from the department or other sources and initiating a complaint). Nineteen percent of complaints came from members of the public. Nineteen percent of complaints resulted from information disclosed by license applicants.

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**Complaints Process  
Timeframes**

To determine how well the disciplinary process is working, we began by examining process timeframes. Complaints should be dealt with as quickly as possible to ensure corrective action is taken against licensees accused of misconduct and further harm is avoided. Results from file review showed the average time from receipt of complaint to initial hearing at screening panel was approximately 60 days. Average time from receipt of complaint to closure was around 120 days. Process timeframes can vary according to the complexity of the case, assignment for investigation, or frequency of board disciplinary panel meetings. When all process steps are considered, we determined the average timeframes observed are within a reasonable range.

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**Complaints Outcomes**

Boards dismiss the majority of complaints because there is no reasonable cause for further action. Complaints can be dismissed either with or without prejudice. Complaints dismissed with prejudice cannot be referenced in future complaints against the licensee. Complaints dismissed without prejudice remain on file and can be referenced in subsequent complaints against the licensee. For unprofessional conduct cases, board sanctions are imposed where a finding of reasonable cause is upheld by the adjudication panel. A small proportion of complaints are dismissed due to a lack of jurisdiction. The next table shows complaints outcomes data for 2003:

**Table 8**

**Final Disposition of Closed Complaints**  
Fiscal Year 2002 and Fiscal Year 2003

<i>Board Action</i>	<i>% of Closed Complaints</i>
No Reasonable Cause	63 %
Licensing Decision	8.5 %
Disciplinary Sanctions	25.5 %
Outside Jurisdiction	3 %

**Source: Compiled by Legislative Audit Division from department records.**

To determine how well the disciplinary process is protecting the public, we examined complaints files to ensure screening panels acted appropriately when dismissing complaints. We did not identify any examples of screening panels dismissing complaints when corrective action appeared to be justified by the available information.

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**Survey Responses Relating  
to Disciplinary Process**

We included questions relating to disciplinary activities in both board members and licensee surveys. Overall, survey responses were positive and we found no significant difference between responses for public board members. As representatives of the public, it should be expected public board members are more alert to possible professional bias in the disciplinary process. Board members representing the public do not appear to have concerns over bias in disciplinary proceedings. Responses for licensees were similar to the board member survey, but licensees had less knowledge of the disciplinary process (a significant proportion of responses were in the don't know category). The following chart shows results from board member survey returns:

Figure 13

**Survey Responses Relating to Disciplinary Activities**

**Board Members - Complaint and disciplinary procedures ensure complainants are given a fair hearing**



**Board Members - In general, board sanctions applied in cases of unprofessional conduct are appropriate**



**Board Members - The complaints and disciplinary process ensures complaints are resolved as quickly as possible**



Strongly Agree
  Agree
  Neutral
  Disagree
  Strongly Disagree

Source: Legislative Audit Division survey data.

Some board members did express concerns over the timeliness of disciplinary proceedings. In particular, members of the Board of Architects, Board of Professional Engineers and Land Surveyors, and Board of Dentistry expressed concerns in the area. Review of meeting schedules and complaints volumes for these boards did not identify problems with the frequency of meetings relative to the number of complaints received. It is likely any perceived delays in disciplinary proceedings are the result of other factors, such as the investigation process or the licensee’s response to complaint information.

**Promoting Uniformity in Disciplinary Activities**

Overall, we believe standardized disciplinary procedures have been successful in insulating the process from possible bias. We did not

## Chapter V – License Renewal

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identify problems with impartiality in the complaints process. We did identify inconsistencies in board activities and in department administrative procedures. Our review identified areas where increased standardization in disciplinary policies and procedures could be achieved. By promoting further standardization, we believe boards and the department can ensure disciplinary proceedings are conducted in accordance with legislative intent. The following sections outline recommendations in the following areas:

- ▶ Consistency in board disciplinary policies.
- ▶ Uniform administrative rules for professional assistance programs.
- ▶ Department compliance inspection procedures.
- ▶ Department investigation procedures.

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### **Consistency in Board Disciplinary Policies**

Board authority over professional misconduct inevitably leads to variations between board disciplinary policies. Although variations are a natural feature of the professional licensing system, differences in disciplinary policies should always reflect the goal of public protection. Boards should use uniform disciplinary policies, except where specific aspects of professional practice necessitate alternatives to protect the public. The statement of intent attached to Title 37, Chapter 1, Part 3, MCA (Uniform Professional Licensing and Regulation Procedures), states the following, “It is the intent of the legislature to strengthen and consolidate disciplinary and licensure procedures for the licensed professions and occupations by providing a uniform disciplinary, licensing, and regulatory act, with standardized procedures for regulation.”

During our review of complaint files we noted examples of inconsistencies between board disciplinary policies. Identified examples included use of board screening panels to pursue late renewal applicants or verify compliance with renewal requirements, inconsistent application of sanctions, and procedures for non-routine applications. In some instances, licensees were disciplined when the threat to public safety was limited. For example, we documented cases where licensees were disciplined for failing to display a license

correctly in the place of business. Even for minor administrative violations (such as failing to display a license correctly), the complaint can become a matter of public record. A member of the public using the department’s licensee lookup service cannot distinguish between minor administrative violations and disciplinary actions relative to professional capabilities. This could have a disproportionate effect on the licensee’s employment or business prospects when compared with the original violation.

Inconsistencies in the treatment of complaints relating to administrative violations could be reduced by developing uniform procedures based on existing best practices. Boards could also benefit from exploring disciplinary options used in other state government licensing or law enforcement functions. Alternative options could include deferred sanctions or limited disclosure for complaints where there is limited threat to public safety. Promoting standardized procedures could also allow the department to realize administrative efficiencies. As inconsistencies in the disciplinary process are identified and reduced, it should be easier for department staff to develop streamlined disciplinary procedures and reduce effort and timeframes associated with disciplinary action.

### **Recommendation #6**

**We recommend the department, in consultation with boards, revise procedures or, where appropriate, develop model administrative rules to increase consistency in the disciplinary process by:**

- A. Classifying disciplinary actions involving minor infractions of administrative rules.**
- B. Establishing an alternative path for disciplinary action involving minor infractions.**
- C. Expanding the range of corrective action options available to boards in cases of administrative noncompliance.**

## Chapter V – License Renewal

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### **Uniform Administrative Rules For Professional Assistance Programs**

Four boards operate professional assistance programs, which allow licensees with drug or alcohol dependency or other problems to seek treatment. Licensees can be referred to programs as part of board disciplinary action, or enter programs voluntarily. Professional assistance programs attempt to use early intervention and treatment to reduce the potential for harm resulting from licensee misconduct. Boards contract with private providers for program services and licensee participants cover the cost of treatment.

Review showed professional assistance programs for the Board of Medical Examiners, Board of Dentistry, and Board of Pharmacy operate without any formal guidance through administrative rules. Program administration policies have been developed, but these only provide internal guidance for contracted personnel. Section 37-1-131 (1), MCA, states “boards within the department shall set and enforce standards and rules governing the licensing, certification, registration, and conduct of the particular profession or occupation within its jurisdiction.” To comply with statute, boards must formally establish rules governing assistance program administration. Without rule-based criteria, determining the need for disciplinary action and communicating decisions with boards is based on the judgments of assistance program staff.

The contractual relationship between boards and assistance programs does not provide sufficient guidance to either party in cases of professional misconduct and reduces boards’ ability to enforce disciplinary action consistently. For example, in a case of self-reported drug addiction, boards have no means of assessing the potential threat to public safety and rely on contracted program staff to determine if disciplinary action is necessary to prevent harm.

The Nurses Assistance Program has been operating with administrative rules since 1991. These rules provide guidance for program operations, including admission and discharge criteria and reporting relationships between program staff and board disciplinary panels. Discussions with department staff did not provide a clear rationale for differences between the availability of rules for

programs. Emphasizing the needs of individual licensees may have discouraged boards from establishing rule-based guidance. To achieve consistency and provide better oversight of assistance programs, the department should develop model rules in consultation with the relevant licensing boards. Model rules should be generic in nature and allow for variations between the scope of treatment for different programs. Administrative rules governing the operation of the Nursing Assistance Program (ARM 8.32.1601 – 1612) offer the department a good basis for developing comprehensive rule-based criteria applicable to all assistance programs. We suggest the department use these existing rules as a template in developing model rules.

**Recommendation #7**

**We recommend the department develop model administrative rules to provide guidance for professional assistance programs.**

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**Department Compliance  
Inspection Procedures**

Some boards use on-site inspections to evaluate compliance with licensure requirements. Inspections are conducted by department staff or contractors and assess whether a licensee’s business premises and practices meet prescribed standards. For example, the Board of Pharmacy conducts periodic inspections of pharmacies to determine if pharmaceutical drugs are correctly stored and dispensed. While some variation in inspection procedures is necessary to reflect specific standards, we identified three areas where we believe procedures could be improved through standardization:

- ▶ Documentation of inspection visits allows for some oversight, but there does not appear to be any additional means for the department to verify inspection results, evaluate the performance of inspectors for appraisal purposes, or obtain input from licensees following inspection visits. Lack of capability in these areas does not allow the department to meet its formal staff development and customer service goals and objectives for compliance inspection programs. Improved procedures could include random reviews of inspections through follow-up calls to licensees, or including questions relating to inspections as part of regular consultation with licensees.

## Chapter V – License Renewal

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- ▶ The department is not using standardized inspector report forms as mandated by statute. This has resulted in variations between boards in recording violations in the database. For some boards there was no available information on the number or type of violations identified. The lack of a standard inspection report format limit the department’s ability to reduce costs and waste as required by law. The department also lacks sufficient data on compliance violations for certain boards.
- ▶ There is little uniformity in deciding which violations warrant disciplinary action. Determining the appropriate response to compliance violations on a case-by-case basis introduces a significant degree of subjectivity to the process. Lack of formalized policies and procedures in this area has several negative consequences, including impairing the department’s ability to provide effective oversight of staff, and increasing the probability of inconsistent decision-making.

Inconsistencies in inspection procedures are a result of the previous organizational structure, where the department’s oversight capabilities were limited by autonomous board staff units. Board staff units developed procedures to reflect specific board compliance standards. The department should take advantage of recent reorganization efforts to pursue further standardization of compliance inspection procedures. By standardizing procedures, the department should be able to provide more effective oversight of inspection programs and deliver better services to licensees and boards.

**Recommendation #8**

**We recommend the department develop standardized procedures for compliance inspections. These procedures should include the following elements:**

- A. Inspection/inspector supervision.**
- B. Standardized format for compliance inspection reports.**
- C. Uniform procedures governing classification and reporting of compliance violations.**

**Department Complaint Investigation Procedures**

The department is responsible for investigating complaints of professional misconduct by licensees. Investigations are initiated by board screening panels. Screening panels determine if a complaint warrants further investigation to uncover relevant facts. Review of complaint investigation procedures showed the department does not use evaluation tools allowing for assessment of investigations on a project-specific basis. Limited management control over the investigation process (in the form of effective performance evaluation parameters) impairs the department’s ability to identify and correct weaknesses in the process and deliver consistency in service outcomes.

Data showed significant disparities between complaint investigation turnaround times for different boards. Over FY 2002 and FY 2003, we observed average turnaround times varying between 22 and 222 working days. Where such large differences exist in investigation turnaround times, the department cannot guarantee equal treatment of complainants and licensees (as respondents to complaints). As a major part of the disciplinary process, investigations can also impact overall timeframes for complaint resolution. The department’s limited management control in this area reduces its ability to improve consistency in the disciplinary process.

## Chapter V – License Renewal

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Increased supervision of staff activity and identification of defined performance evaluation parameters for investigations could deliver benefits for complainants and licensees. To ensure a degree of flexibility is retained in the investigation process, the department should examine the use of project-specific budgets. Using ‘billable’ hours as a budgeting mechanism is a common approach for managing functions where staff time is the primary resource. Establishing budgeted hours for component investigation tasks should allow the department to gather data for use in managing investigation resource allocation, and establishing performance evaluation parameters for staff. Although there is some scope for standardizing budgeted hours for certain investigative tasks (such as report preparation), the department should use budget amendment procedures to ensure there is some flexibility in the budgeting process.

### **Recommendation #9**

**We recommend the department develop procedures to strengthen supervision of complaint investigations.**

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### **Overall Conclusion**

Uniform procedures have been used to good effect to promote standardization in the disciplinary process and ensure the public interest is protected. In a self-regulatory system where professionals have majority representation on disciplinary panels, the potential for bias is never completely eliminated. However, by requiring all boards to follow a uniform complaint process, statute effectively limits the possibility of arbitrary or capricious decision-making. The recommendations outlined previously address areas where further standardization can be pursued to improve consistency in board policies and department operating procedures.

# Appendix A - Audit Approach

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## Audit Scope

To establish audit scope, we relied primarily on guidance in House Joint Resolution (HJR) 20. Following review of statutes relating to program elements identified in HJR 20, we met with department staff to discuss board activities and operations. We coordinated planning and fieldwork with financial compliance auditors to avoid duplication and take advantage of previous audit work. Audit scope included involvement and input from both board members and licensees, in addition to department staff and officials.

Given the scope of HJR 20, we restricted audit scope to include only those boards and programs administered through the Department of Labor and Industry's Business Standards Division. Although Montana regulates other professional and occupational groups either through licensing or registration, we did not include these in our review because of differences in regulatory approach and administrative arrangements.

Unless otherwise stated, audit work focused on the two fiscal years from July 2001 to June 2003. By compiling data from two full fiscal years, we were able to ensure our analysis reflected the use of biennial license renewal cycles by some boards.

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## Audit Methodologies

In response to audit objectives, we developed the methodologies outlined below.

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## Audit Planning

We reviewed statutes, rules and policies and procedures for all licensing boards and programs administered by the department. We reviewed materials gathered as part of the Department of Labor and Industry Financial Compliance audit for fiscal year ending June 30, 2003 and discussed findings and recommendations with financial compliance audit staff. We also reviewed budgetary information for the Business Standards Division in the 2005 biennium fiscal report issued by the Legislative Fiscal Division. We obtained and reviewed licensing board performance and financial compliance reports from legislative audit offices in other states. We also reviewed public policy studies of professional regulation by the Pew Commission

## **Appendix A - Audit Approach**

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Taskforce on Health Workforce Regulation and the Federal Trade Commission.

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### **Financial Information**

We interviewed department staff involved in processing financial information and obtained financial data for FY 2002 and FY 2003 from SABHRS, including all revenues and expenditures for all board fund codes. We reviewed department documentation of the procedures used to set fee amounts and compiled information on all fees from board fee schedules as defined in administrative rules. We reviewed audit work papers relating to board fund cash balances compiled by financial compliance auditors.

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### **Disciplinary Procedures**

We reviewed department and board statutes, rules, policies and procedures relating to disciplinary activities, and interviewed department staff involved in various aspects of disciplinary procedures. Analysis of all complaints data extracted from the department's database for FY 2002 and FY 2003 was conducted. We conducted a review of 70 complaints files for FY 2003 using a random sample of complaints submitted to ten different boards. We observed screening and adjudication panel meetings for various boards. Department procedures and available data for compliance inspections and complaint investigations were reviewed and staff involved were interviewed.

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### **Department Administrative Procedures**

We discussed the department's role in administering board activities with bureau and division-level staff, as well as staff from the Department of Labor and Industry's Commissioner's Office. Documentation, including statutes, rules, policies and procedures, were reviewed for all relevant aspects of the department's administrative role. We also reviewed the organizational structures and general management approaches used in administration of board activities, and assessed the efficiency and effectiveness of department management information systems (including provision of online services for licensees).

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### **Board Activities**

We reviewed statutorily defined board membership requirements and compiled information on the appointment process used by the

## **Appendix A - Audit Approach**

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Governor's Office. We compiled data on board member terms and the ratio of public to professional members for each board. We attended various board meetings over a two-month period and observed proceedings. We also reviewed the requirements imposed by boards as part of licensure and renewal procedures, including education, experience and continuing education requirements.

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### **Review of Other States**

Each objective also included methodologies addressing comparative analysis of licensing activities for ten different boards in Montana with equivalent boards in six rural or semi-rural western states. States were selected to ensure validity of comparison with Montana. Selected states were Idaho, Wyoming, South Dakota, Utah, Oregon and New Mexico.



# Appendix B – Board Member Survey Response Data

Question Statement	Strongly Agree	Agree	Neither	Disagree	Strongly Disagree	Don't Know
Licensing fees are generally affordable for first-time license applicants.	40%	48%	4%	7%	0%	1%
Fees for renewal applicants are generally affordable.	45%	45%	3%	5%	1%	1%
Fees accurately reflect the costs of regulating the profession.	30%	40%	12%	11%	3%	3%
The department provides sufficient information to board members on the process used to calculate fee levels.	22%	42%	16%	12%	5%	4%
The department communicates information on board finances to board members in a timely fashion.	27%	49%	11%	6%	4%	2%
Department information on board finances promotes informed decisions regarding board operations.	22%	50%	14%	8%	2%	2%
Sufficient funds exist for your board to operate as an effective regulator for licensees and consumers.	17%	53%	16%	7%	2%	3%
Complaint and disciplinary procedures ensure licensees are given a fair hearing.	44%	43%	3%	3%	4%	2%
Complaint and disciplinary procedures ensure complainants are given a fair hearing.	42%	43%	4%	4%	3%	3%
The complaint and disciplinary process ensures complaints are resolved as quickly as possible.	12%	46%	12%	16%	9%	4%
Department staff provide sufficient information for board screening panel members.	29%	40%	8%	6%	2%	15%
Department investigations provide sufficient factual evidence for board members relevant to specific complaints.	21%	53%	13%	4%	3%	6%
Department legal staff provide useful advice and support to board members during disciplinary proceedings.	32%	42%	9%	3%	6%	9%
In general, the board sanctions applied in cases of unprofessional conduct by licensees are appropriate.	22%	52%	7%	5%	3%	11%
Board sanctions are applied consistently for all misconduct cases.	19%	48%	14%	5%	1%	12%
The department provides administrative support services necessary for your board to complete its mission.	32%	46%	9%	7%	2%	2%
Department staff are generally available to answer questions and provide information for board members.	39%	51%	3%	2%	4%	1%
Expanding online services such as license renewal would promote the missions and goals of your licensing board.	39%	35%	16%	3%	2%	5%
Board meetings are conducted in accordance with relevant statutes, rules and board policies.	54%	42%	2%	1%	1%	1%
Board meeting facilities (rooms, equipment and organization) are sufficient.	34%	54%	7%	4%	0%	1%
Enough meetings are scheduled through the year for your board to get its business done.	25%	58%	7%	7%	1%	1%
Board meetings are scheduled at appropriate and convenient times and locations.	26%	64%	6%	2%	1%	1%
The general public has access to board proceedings where the public's right to know is paramount.	50%	46%	2%	0%	0%	2%

## Appendix B – Board Member Survey Response Data

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	Strongly Agree	Agree	Neither	Disagree	Strongly Disagree	Don't Know
The number of board members allows for effective decision making.	39%	46%	2%	7%	4%	1%
The balance between the number of public and professional board members is appropriate.	35%	49%	7%	4%	2%	1%
Membership requirements ensure a sufficient number of experienced and qualified professionals serve on the board.	37%	48%	5%	6%	2%	2%
Board member terms (length of service) are appropriate.	30%	57%	8%	2%	1%	1%
Limiting terms of a board member has a positive impact on board operations.	11%	33%	29%	17%	6%	4%
The professional experience requirements applied as a condition of licensure help protect the public.	49%	40%	4%	2%	1%	2%
Examination requirements applied as a condition of licensure help protect the public.	50%	40%	4%	2%	1%	2%
The board's use of criminal background checks as a condition of licensure is appropriate.	39%	33%	10%	1%	1%	16%
Board consideration of previous criminal convictions ensures applicants for licensure are treated with fairness.	32%	39%	14%	1%	1%	13%
Continuing education requirements applied as a condition of license renewal help protect the public.	46%	32%	10%	6%	4%	2%
First-time applicants should find the application process easy to understand.	25%	56%	7%	5%	1%	5%
The license application process allows for access to the profession by new practitioners.	34%	55%	6%	3%	1%	1%

## Appendix C – Online Licensee Survey Response Data

Question Statement	Strongly Agree	Agree	Neither	Disagree	Strongly Disagree	Don't Know
Licensing fees are generally affordable for members of the profession/occupation.	14%	63%	12%	8%	2%	1%
If fees increase or decrease, the board and/or the Department of Labor and Industry provide information explaining why.	20%	38%	16%	6%	2%	19%
Disciplinary proceedings ensure licensees are given a fair hearing.	7%	40%	14%	2%	1%	36%
Disciplinary procedures ensure complaints are dealt with as quickly as possible.	5%	28%	19%	4%	2%	42%
Department of Labor and Industry licensing staff are generally available to answer questions from licensees.	13%	52%	13%	4%	1%	17%
In general, the punishments imposed by the board in cases of professional misconduct are consistent with offenses and help protect the public.	3%	33%	15%	5%	3%	41%
Board meetings are held in locations that make it easy for licensees to attend if they want to.	1%	25%	26%	9%	2%	37%
There are enough public members to ensure the public interest is protected.	4%	35%	20%	4%	1%	36%
Professional experience requirements for first-time license applicants ensure new licensees have sufficient practical knowledge and skills.	14%	59%	9%	10%	4%	5%
Examination requirements for first-time license applicants provide for comprehensive testing of knowledge.	15%	53%	11%	9%	5%	8%
The number of hours of continuing education required for renewal applicants ensures skills are maintained and the public is protected.	4%	57%	15%	14%	5%	5%
The license application process allows for access to the profession/occupation by new people.	4%	70%	14%	3%	1%	8%



# **Department Response**

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*Montana*  
**Department of Labor and Industry**  
**Commissioner's Office**

JUDY MARTZ, GOVERNOR  
WENDY J. KEATING, COMMISSIONER

RECEIVED

JUN 10 2004

LEGISLATIVE AUDIT DIV.

June 8, 2004

Scott A. Seacat  
Legislative Auditor  
Legislative Audit Division  
P. O. Box 201705  
Helena, MT 59620-1705

Dear Mr. Seacat:

Enclosed please find the Department's response to the Performance Audit Report for Professional & Occupational Licensing, dated June 2004.

We concur with all the recommendations and have included in our responses, where appropriate, our action plan and anticipated time frame for completion of each recommendation. I appreciate the hard work of your staff and believe that their recommendations will provide a basis for improving our services.

Please feel free to contact me if you have any questions. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Wendy Keating".

Wendy Keating  
Commissioner

cc: James Brown, Administrator, Business Standards Division  
Kevin Braun, Chief Legal Counsel, Office of Legal Services  
Lisa Addington, Bureau Chief, Health Care Licensing  
Sandy Matule, Acting Bureau Chief, Business & Occupational Licensing  
Jim Pellegrini, Legislative Audit Division  
Angus Maciver, Legislative Audit Division  
Angie Grove, Legislative Audit Division

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**MONTANA DEPARTMENT OF LABOR AND INDUSTRY  
RESPONSE TO PROFESSIONAL & OCCUPATIONAL LICENSING  
PERFORMANCE AUDIT REPORT**

**June 8, 2004**

This document addresses the Department's response to the performance audit report dated June, 2004, regarding performance audit of several professional and occupational licensing boards administratively attached to the Department of Labor and Industry, as requested by HJR 20. The Department concurs conceptually with the recommendations set forth in the audit. In consultation with the licensing boards, we commit to developing a detailed action plan and, as necessary, to drafting legislation for upcoming legislative sessions. In this response, we will refer to the Health Care Licensing Bureau as HCLB and the Business and Occupational Licensing Bureau as BOLB.

Chapter I Introduction and Background

The Department concurs with the process and the information provided.

Chapter II Board and Department Organization

**Recommendation #1**

**We recommend the department continue to pursue improvements in administrative efficiency and effectiveness by:**

**A. Updating and revising administrative policies and procedures.**

Response: **Concur.** The licensing bureaus are in the process of updating the existing policies and procedures to accurately reflect the reorganizations of FY 2004. New policy and procedure manuals will be available no later than July 1, 2005. The Executive Officer position descriptions in BOLB are in place. The Unit Supervisor position descriptions in HCLB have been written and submitted to Human Resources for classification. HCLB's organizational handbook is attached, which outlines the roles and responsibilities of all staff. BOLB is in the process of assembling a similar handbook and will have it completed by the end of December, 2004.

**B. Developing compilation and reporting standards for management information.**

Response: **Concur.** The licensing bureaus will compile and report consistent information across the bureaus in the annual report to the Governor. This year's annual report will follow the format that has been used for the past several decades. The licensing bureaus will identify standard performance indicators by December 31, 2004. In the future, annual reports will be completed by September 1 of each year. Additionally, the information will be used to assess the successful implementation and effectiveness of the reorganizations. The information also will be distributed in licensing bureau newsletters, on the web site, and to board members and interested parties.

**C. Establishing performance measurement procedures to assess progress in implementing management reorganization plans.**

Response: **Concur.** The licensing bureaus are working on methodologies for quantifying timeframes for processes and performance indicators. This work will be completed by December 31, 2004. The new organizational structures were developed to improve the level of supervision and accountability. The licensing bureaus have begun developing and using customer and board member satisfaction surveys.

Chapter III Licensing Fees and Board Finances

**Recommendation #2**

**We recommend the department:**

**A. Seek statutory authority to set uniform administrative service fees.**

Response: **Concur.** The licensing bureaus will seek legislation as necessary in the next legislative session. Currently, the boards set the fees commensurate with their own board's costs.

**B. Develop procedures to ensure that administrative service fees are commensurate with the cost of services.**

Response: **Concur.** Once legislation is in place, the licensing bureaus will develop procedures to ensure the administrative service fees are commensurate with the cost of the services.

**Recommendation #3**

**We recommend the department work with licensing boards to improve responses to excess cash balances by:**

**A. Seeking statutory authority for temporary fee adjustments.**

Response: **Concur.** The licensing bureaus will seek legislation in the next legislative session.

**B. Developing model administrative rules defining procedures for temporary fee adjustments.**

Response: **Concur.** The licensing bureaus have filed an administrative rule amendment to address the procedure. The rule should be finalized before the end of September, 2004.

## Chapter IV License Application

### **Recommendation #4**

**We recommend the department work with licensing boards to delegate responsibility for review and approval of routine applications to department staff.**

Response: **Concur.** The licensing bureaus currently use check sheets to review (and in some cases approve) all applications. Supervisors will evaluate all check sheets for an accurate reflection of licensure requirements. Following the Department's board member training in October, 2004, those boards that currently review and approve all applications will be asked to allow licensing bureau staff to approve applications with a quarterly random review of approved applications. The intent of random review by the boards is to illustrate to the boards that the staff is able to approve applications without error.

## Chapter V License Renewal

### **Recommendation #5**

**We recommend the department continue to standardize license renewal procedures by:**

**A. Evaluating renewals distribution and, where necessary, altering renewal dates for certain boards.**

Response: **Concur.** BOLB is currently evaluating renewal cycles and intends to amend renewal cycles to redistribute them throughout the year. This effort has already begun. HCLB believes that with the continued use of online renewal, the wide fluctuations in workload will be lessened. For this reason, the distribution issue is not as significant as it once was. During the last Board of Nursing renewal period, 2002, the online adoption rate was 31%. In March 2004, the Board of Medical Examiners' online adoption rate was 41%. These are the two largest boards in the bureau, and with additional online enhancements, the adoption rate of online renewals is expected to continually grow.

**B. Pursuing revisions to statute to eliminate documentary verification of continuing education hours in favor of random audits to establish compliance.**

Response: **Concur.** The licensing bureaus will approach the boards for cooperation. If an agreement cannot be reached with the boards, the Department will propose legislation to support the use of random audits of not more than 20% of licensees. If the legislation cannot be secured this upcoming legislative session, the Department will propose legislation for the 2007 legislative session.

**C. Phasing-out continual renewal cycles in favor of fixed-date renewals.**

Response: **Concur.** BOLB has already proposed administrative rule amendments for the three BOLB licensing programs involved. The rule should be final by the end of August, 2004. The three programs will be placed on a biennial renewal cycle.

## Chapter VI Compliance & Disciplinary Activities

### Recommendation #6

**We recommend the department, in consultation with boards, revise procedures or, where appropriate, develop model administrative rules to increase consistency in the disciplinary process by:**

#### **A. Classifying disciplinary actions involving minor infractions of administrative rules.**

Response: **Concur.** The licensing bureaus will work with the boards to develop a classification system to identify minor infractions. This work will begin this summer and will be finished by the end of January, 2006. Any required statutory amendments will be proposed for the 2007 legislative session.

#### **B. Establishing an alternative path for disciplinary action involving minor infractions.**

Response: **Concur.** The licensing bureaus will work with the legal staff to develop alternative means and methods of addressing administrative non-compliance. This work will begin this fall and recommendations will be available by July, 2005. The licensing bureaus and the legal staff will then present the recommendations to the boards. A final plan, agreeable to the boards and the legal unit will be completed by December, 2005. Necessary statutory amendments will be proposed for the 2007 legislative session.

#### **C. Expanding the range of corrective action options available to boards in cases of administrative non-compliance.**

Response: **Concur.** Because the issues in recommendation (C) are similar to (B), the same timeline outlined in (B) will be used for this recommendation.

### Recommendation #7

**We recommend the department develop model administrative rules to provide guidance for professional assistance programs.**

Response: **Concur.** The Department will develop model administrative rules for the professional assistance programs. Work will begin on these rules during the summer of 2004, when the current contractors meet with HCLB to discuss future RFPs for the assistance programs. HCLB will propose model rules for the assistance programs by the end of July, 2005, and expect the rules to be effective by September, 2005.

### Recommendation #8

**We recommend the department develop standardized procedures for compliance inspections. These procedures should include the following elements:**

**A. Inspection/inspector supervision**

Response: **Concur.** The licensing bureaus will develop standardized procedures governing classification and reporting of compliance violations. This will be a coordinated effort of the inspectors, boards, and legal staff. Procedures and classification of violations will be established by July, 2005.

**B. Standardized format for compliance inspection reports.**

Response: **Concur.** The HCLB and BOLB reorganizations have each provided for improved inspection and inspector supervision. Additionally, the supervisors will create policies and procedures to randomly audit inspections and inspector performance. These policies will be in place by July, 2005.

**C. Uniform procedures governing classification and reporting of compliance violations.**

Response: **Concur.** The licensing bureaus are developing a standard inspection report, which has generic identifying information, followed by board specific inspection requirements and citations of any areas not in compliance, and ending with a signature section, which will include an exit interview. These forms will be completed and in use by December, 2004. Additionally, all those entities and licensees inspected will be given an optional and confidential survey to complete and submit directly to the Department. These surveys will be completed and used on a routine basis beginning December, 2004.

**Recommendation #9**

**We recommend the department develop procedures to strengthen supervision of complaint investigations.**

Response: **Concur.** The licensing bureaus will develop procedures to strengthen supervision of complaint investigations. This will be accomplished by periodic and random checking on investigations completed for both contract and staff investigators. Supervisors will call licensees and verify that an investigation was performed and that an exit interview was completed. This will begin by December, 2004. Performance indicators will be developed for and used to evaluate the investigators' quality and quantity of work.

Department of Labor and Industry

Business Standards Division

Health Care Licensing Bureau

Organizational Structure

Handbook

Created January 5, 2004  
Revised January 13, 2004  
Revised January 26, 2004  
Revised January 30, 2004  
Revised February 5, 2004

## **Overview**

The Health Care Licensing Bureau (HCLB) within the Business Standards Division is charged with providing a variety of administrative, technical and professional services to the Boards. The Bureau staff accomplishes this work within the framework of the Department's core values.

The Department's core values are:

- ❖ Customer Service
- ❖ Continuous Improvement
- ❖ Individual Professional Growth
- ❖ Personal Responsibility
- ❖ Workplace Ethics

The Bureau is structured to best attain the Department's goals. This structure includes a Bureau Chief, and three units. Two of the units cover general Board activities, and one unit covers all Board compliance activities. The Bureau believes that this structure provides back up, standardization, accountability, and reduces duplication of services. The Bureau utilizes a team approach for all work, and all employees are personally responsible for their respective work products.

## **Activity Sheets**

All employees are required to complete daily activity sheets and enter them on the Bureau's Task Management Data Base weekly. The activity sheets are vital to the proper allocation of recharges to each board. Accuracy and timeliness are imperative. The Bureau Chief will ask Unit Supervisors to run periodic reports on the data to assess the need for additional resources and for proper reallocation of resources.

## **Compliance Unit**

A Unit Manager who also serves as the Bureau Chief's Administrative Officer supervises the Compliance Unit. The Compliance Unit has Compliance Specialists and Investigators. The duties of the Compliance Unit are:

### Compliance Specialists – Supervised by the Compliance Unit Supervisor

- ❖ Receive and review all complaints, entering them into Oracle data base and creating the file
- ❖ Prepare and send all Goyen letters, tracking responses, updating Oracle, and scheduling respondents in Screening Panels (SP)
- ❖ Prepare SP and Adjudication Panel (AP) agendas and books, arrange for rooms or conference calls, mail books, put agendas on the web site
- ❖ Draft SP and AP minutes
- ❖ Prepare travel claims for SP and AP participants
- ❖ Update Oracle with SP outcomes
- ❖ Prepare To Do List for SP & AP meeting
- ❖ Prepare all dismissal letters
- ❖ Submit Final Orders to Legal for Certificate of Service and mailing
- ❖ Copy all Final Orders and maintain a final order registry by Board
- ❖ Notice on National Practitioner Data Bank if applicable
- ❖ Monitor licensee discipline
- ❖ Assure minutes are approved, signed and filed in a central location
- ❖ Place AP minutes on the web site
- ❖ Answer all compliance unit phone calls

### Investigators - Supervised by the Compliance Unit Supervisor

- ❖ Receives case assignments from the Compliance Unit Manager
- ❖ Perform investigations and write investigative reports
- ❖ Update Oracle Investigation tab

### Unit Supervisor – Supervised by the Bureau Chief

- ❖ Prepare request for investigations or Peer Review

## All Units

### Unit Supervisors – Supervised by the Bureau Chief

- ❖ Supervise and manage all staff for the respective unit
- ❖ Personnel actions including directing employees, assigning work, transferring, hiring, selecting, guiding, assessing training needs, scheduling and conducting performance appraisals.
- ❖ Develop position descriptions
- ❖ Analyze work flow of the unit and develop plans of improvement with the management team
- ❖ Unit I & II Supervisors, monitor SABHRS on a monthly basis, including revenue estimates and fee justifications
- ❖ Assist Bureau Chief with budget process for legislative session, including EPP decision packets and justifications
- ❖ Assist Bureau Chief with proposed legislation
- ❖ Develop, establish and implement policies and procedures as a member of the management team
- ❖ Provide oversight for contracts within the unit
- ❖ Monitors all boards in the unit to assure that processes are current, and laws and rules are being followed
- ❖ Oversees rule process for all boards
- ❖ Oversees records retention for respective boards/programs

## Units One and Two

### Program Specialists

- ❖ Answers questions regarding Board issues, laws and rules in consultation with Board Counsel
- ❖ Address and name changes to include updating the files
- ❖ Represents the Board at state, national and other meetings as requested by the Board
- ❖ Provides background information on current practice and regulatory issues to the Board
- ❖ Assists the Unit Supervisors with budget projections for the legislative session
- ❖ Prepares fee justifications, revenue estimates and fiscal notes as needed
- ❖ Works with Board, legal staff and Bureau Rules Specialist to draft, notice and adopt administrative rules, including proof reading notices and replacement pages, and ensuring that they are properly posted to the web site
- ❖ Schedules hearings and court reporters for rules as needed
- ❖ Prepares legislative testimony and assists the department with legislation as needed
- ❖ Prepares Board newsletters or contributes to association newsletters as requested by the Board. Works with web master to place Board newsletter on the web site.
- ❖ Coordinates RFPs with Dept. of Admin. Reviews respondents and selects the contractor with the Unit Supervisor and a Board member.
- ❖ Prepares, schedules, proctors and grades exams and then reports results
- ❖ Enters exam data into the Oracle system
- ❖ Prepares information for the Governor's reports and other reports as requested
- ❖ Verifies continuing education, monitors the data base and prepares correspondence related to continuing education
- ❖ Accountable for all files and record retention
- ❖ Maintains a records disposal schedule so that files are kept at a manageable level
- ❖ Prepare Full Board Meeting in conjunction with Board Chairperson and Board Counsel and posts appropriate information to the web site
- ❖ Draft Full Board Meeting Minutes and assure they are properly approved and posted to the web site
- ❖ Prepare To Do List from Full Board Meeting
- ❖ Provide Inspection reports to the Boards or review, as needed
- ❖ Set-up renewal processes with IT staff and assist administrative support with renewals, as needed
- ❖ Track continuing education course approvals and random audits when needed
- ❖ Run audit reports, if needed
- ❖ Run lapsing program for non-renewals
- ❖ Monitor SABHRS on a monthly basis for cash and appropriation and report at every regularly scheduled Board meeting.

## Units One and Two

### Application Specialists – Supervised by the respective Unit Supervisor

- ❖ Open mail, date stamp, deliver to appropriate person
- ❖ Process all applications, including entering into Oracle
- ❖ Make all deposits
- ❖ Complete verifications
- ❖ Process renewals
- ❖ Print and mail licenses and wall certificates
- ❖ Address and name changes for renewals and applications only
- ❖ Review laws and rules for concurrence with application processing
- ❖ Make recommendations for standardization of processes

### SABHRS Specialist (one for each Unit)- Supervised by the respective Unit Supervisor

- ❖ Obtains copies of paid bills from Bill Processing Specialist
- ❖ Obtains copies of the SABHRS reports from the Administrative Officer
- ❖ Completes a standard excel spreadsheet itemizing revenue and expenditures for each Board and gives to Program Specialist
- ❖ Back up each other when needed with approval from Unit Supervisor

### Bill Processing Specialist – Supervised by Unit Two Supervisor

- ❖ Receives all bills from the Applications Specialists
- ❖ Codes the bill with fund, org and expense code and sends to DLI for payment
- ❖ Copies all bills and places in a Board file for the SABHRS technician

### Rules Specialist – Supervised by Unit One Supervisor

- ❖ Obtains an electronic copy of the administrative rules
- ❖ Prepares and formats draft rules for Boards
- ❖ Works with Division Rules Coordinator to file rules with the SOS office
- ❖ Works with Program Specialists to proof read final copies of rules and replacement pages before they are printed or placed on the Board's web site

### Web Specialist – (one for each unit) - Supervised by Unit Supervisor

- ❖ Works with Program Specialists to prepare forms, applications and other documents for the Boards' websites
- ❖ Using Adobe software, makes forms interactive for the web site
- ❖ Works with Division web master to place completed forms on the web site

- ❖ Makes recommendations to Web Master regarding ease of web site use

Training Coordinator – Supervised by Unit One Supervisor

- ❖ Tracks all training for the Bureau
- ❖ Plans and organizes training sessions
- ❖ Drafts policies and procedures

**Other Positions**

**Unit One Supervisor** - also serves as the Executive Director for the Board of Medical Examiners

**Unit Two Unit Supervisor** - supervises the Pharmacy Inspector, the Pharmacy Executive Director and the Nursing Executive Director

**Compliance Unit Supervisor** – also serves as Administrative Officer to the Bureau Chief

Pharmacy Inspector

- ❖ Completes inspections of pharmacies and euthanasia sites and reports to the Board
- ❖ Assist in investigations, as needed
- ❖ Provides professional support and public relations for the Board
- ❖ Makes recommendations regarding policies, laws and rules to the Board

Executive Directors

- ❖ Provides public relations for the Board
- ❖ Provides professional support to the Board
- ❖ Provides educational expertise to the Board
- ❖ Makes recommendations regarding policies, laws and rules to the Board
- ❖ Represents the Board at state, national and other meetings as requested by the Board